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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 10, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9303

RIN 3460–AA01

Supplemental Standards of Ethical Conduct for Employees

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim rule with request for comments.

SUMMARY: The Special Inspector General for Afghanistan Reconstruction (SIGAR), with the concurrence of the Office of Government Ethics (OGE), is issuing an interim regulation for SIGAR employees that will supplement the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The supplemental regulation includes a requirement that SIGAR employees obtain prior approval for certain types of outside activities.

DATES: *Effective date:* April 6, 2012.

Comment date: Comments are invited and must be received by June 5, 2012.

ADDRESSES: You may submit comments, in writing, to Hugo Teufel on this rule, identified by RIN 3460–AA01, by any of the following methods:

- *Email: hugo.teufel.civ@mail.mil.* Include the reference ''Supplemental Standards of Ethical Conduct for Employees of SIGAR'' in the subject line of the message.
- *Mail:* Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3940. Attention: Hugo Teufel, Designated Agency Ethics Official (DAEO).
- *Hand Delivery/Courier:* Special Inspector General for Afghanistan Reconstruction, 1550 Crystal Drive, 9th Floor, Arlington, VA 22202. Attention: Hugo Teufel, Designated Agency Ethics Official (DAEO).

FOR FURTHER INFORMATION CONTACT: Christina Beach, Ethics Compliance Officer, at 703–545–5994, email: *christina.k.beach.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch, as codified at 5 CFR part 2635 and effective February 3, 1993, which established uniform standards of ethical conduct applicable to all executive branch personnel.

The National Defense Authorization Act (Pub. L. 110–181) established SIGAR. The agency's mission is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness. Afghanistan reconstruction includes any major contract, grant, agreement, or other funding mechanism entered into by any department or agency of the United States government that involves the use of amounts appropriated, or otherwise made available for the reconstruction of Afghanistan with any private entity to: (1) Build or rebuild physical infrastructure of Afghanistan, (2) establish or reestablish political or societal institutions of Afghanistan, (3) build the Afghanistan National Security Forces, and (4) provide products or services to the people of Afghanistan.

Given the importance of the agency's mission and the need to maintain objectivity and independence, SIGAR, through the proposed provisions, would require prior agency approval before employees engage in certain outside activities. Part 2635.105 authorizes executive branch agencies, with the concurrence of OGE, to publish such agency-specific supplemental regulations as may be necessary to implement their respective ethics programs. SIGAR, with OGE's concurrence, has determined that the following supplemental regulation is necessary, given SIGAR's unique status and mission, to implement the agency's ethics program.

II. Analysis of the Regulations

Section 9303.101 General

Section 9303.101 explains that the regulations apply to all SIGAR employees and supplement the executive branch-wide Standards in 5 CFR part 2635. Section 9303.101 also provides a cross-reference to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, the executive branch-wide regulation regarding outside employment at 5 CFR part 2636, and the regulation concerning executive branch financial interests contained in 5 CFR part 2640.

Section 9303.102 Prior Approval for Certain Outside Activities

Under 5 CFR 2635.803, agencies may, by supplemental regulations, require employees to obtain approval before engaging in outside employment and activities. SIGAR has determined that it is necessary to the administration of its ethics program to require its employees, other than special Government employees, to obtain prior approval for certain types of outside employment and activities. This approval requirement will help to ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable laws and regulations.

Under § 9303.102(a)(1), SIGAR employees must obtain prior approval regarding the provision of professional services that involve the application of the same specialized skills or the same educational background as performance of the employee's official duties. Such outside activities may raise a strong risk of a violation of the Standards. For purposes of this section, the definition of ''professional services'' in § 9303.102(d)(3) reflects the definition of ''profession'' as provided at 5 CFR 2636.305(b)(1), and means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession. Secretarial and clerical positions are not, for purposes of this requirement, considered to provide ''professional services.''

Under § 9303.102(a)(2), SIGAR employees must obtain prior approval regarding teaching, speaking, or writing that relates to the employee's official

duties. This section requires prior approval of outside speaking and writing, as well as outside teaching, but only if it ''relates to the employee's official duties.'' Consistent with the Standards, the term ''relates to the employee's official duties'' is defined in § 9303.102(d)(5) as having the meaning provided in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E). To summarize that definition, teaching, speaking, or writing relates to the employee's official duties if the invitation to teach, speak, or write is extended primarily because of the employee's official position; if the invitation or the offer of compensation (when the employee is to be compensated for the activity) is extended by a person whose interests may be affected substantially by the employee's performance or nonperformance of his or her official duties; if the activity draws substantially on ''nonpublic information,'' a term which § 9303.102(d)(2) defines as having the meaning set forth in § 2635.703(b) of the Standards and which therefore includes information that the employee gains by reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public; if the subject of the activity deals in significant part with SIGAR programs, operations or policies, or with the employee's current or recent assignments; or, in the case of a non-career employee as defined in 5 CFR 2636.303(a), if the subject of the activity deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of SIGAR.

Under § 9303.102(a)(3), SIGAR employees must obtain prior approval regarding certain services for a ''prohibited source.'' The term ''prohibited source'' is defined in § 9303.102(d)(4) as having the meaning set forth in § 2635.203(d) of the Standards, and therefore in summary includes a person or organization, a majority of whose members seek official action by SIGAR, do or seek to do business with SIGAR, are subject to oversight by SIGAR pursuant to sections 1229 and 842 of the National Defense Authorization Act for FY 2008, Pub. L. No. 110–181, or who may be substantially affected by the performance or nonperformance of the employee's duties. The kind of services for a prohibited source for which § 9303.102(a)(3) requires prior approval are those that could raise a question of conflicting financial interests under subpart D of the Standards or a question of loss of impartiality in performing official duties under subpart E of the Standards. Those services include service as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or ''active participant.'' The term ''active participant'' is defined in § 9303.102(d)(1) as having the meaning set forth in subpart E of the Standards, at 5 CFR 2635.502(b)(1)(v). In accordance with that definition, payment of dues to an organization, or the donation or solicitation of financial support, alone does not constitute active participation.

An exception to the prior approval requirement in § 9303.103(a)(3) excludes from the prior approval requirement therein a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees do not have to obtain approval before providing the services listed in § 9303.102(a)(3), if the service is without compensation (other than reimbursement of expenses) and the prohibited source for which the service is to be provided is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization. However, prior approval for such an activity is required if the activity is covered by another of the prior approval requirements in this section.

Under § 9303.102(a)(4), SIGAR employees must obtain prior approval regarding the provision of services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter in which the United States is a party, in which the United States has a direct and substantial interest, or if the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency. Under 5 CFR 2635.805, employees are required to obtain authorization before acting as expert witnesses, other than on behalf of the United States, in any proceeding before a Federal court or agency in a matter in which the United States is a party or has a direct and substantial interest. Paragraph (a)(4) of § 9303.102 is intended to cover such testimony as an outside activity, thus eliminating the need to create a separate procedure for the required authorization. In addition, requiring prior approval under these circumstances will help employees to avoid violating the representational bars in 18 U.S.C. 203 and 205.

Section 9303.102(b) sets forth the procedures for submitting a request for approval of an outside activity, specifying the information to be included in the employee's request, and the contents of a certification the employee is to submit with the request for approval.

Section 9303.102(c) specifies the standard for granting approval. Approval shall be granted only upon a determination by the agency official who is the designated authority to make such a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

Section 9303.102(d) defines the terms ''active participant,'' ''nonpublic information,'' ''professional services,'' ''prohibited source,'' and ''relates to the employee's official duties,'' for purposes of the section, as explained above, consistent with the Standards and other regulations issued by OGE.

Requiring prior approval will give SIGAR managers the opportunity to review the proposed employment or activity in light of the employee's official duties and to consult with an agency ethics official concerning the applicability of Federal conflict of interest statutes and ethics regulations to the proposed activity. The executive branch-wide Standards, at 5 CFR 2635.802, explain that an activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation, or if, under the standards set forth in §§ 2635.402 and 2635.502 of the Standards, it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Even when prior approval is not required, conflict of interest statutes and the Standards may restrict the actions of employees in connection with participation in such activities or organizations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 1103(b)(1) and 1105, these regulations are not subject to the rulemaking requirements of the Administrative Procedure Act, at 5 U.S.C. 553(b), (c), and (d), because they apply solely to SIGAR or its employees. Furthermore, SIGAR finds good cause that it is in the public interest that these internal regulations take effect as an interim rule upon the date of publication of this **Federal Register** rulemaking document. In issuing a final rule on this matter, SIGAR will consider

all written comments on this rule that are submitted by the June 5, 2012 due date.

Regulatory Flexibility Act

As Acting Inspector General of SIGAR, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it will primarily affect SIGAR employees.

Paperwork Reduction Act

As Acting Inspector General of SIGAR, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule, because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

SIGAR has determined that this rule is not a rule as defined in 5 U.S.C. 804 and, thus, does not require review by Congress.

Executive Order 12866

In promulgating this rule, SIGAR has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any way event deemed ''significant'' thereunder.

Executive Order 12988

As Acting Inspector General of SIGAR, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 9303

Conflict of interests, Government employees.

Authority and Issuance

For the reasons set forth in the preamble, the Special Inspector General for Afghanistan Reconstruction, with the concurrence of the Office of Government Ethics, is amending chapter LXXXIII of title 5 of the Code of Federal Regulations by adding part 9303 to read as follows:

PART 9303—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Sec.

Authority: 5 U.S.C. Section 7301; 5 U.S.C. App. (Ethics in Government Act of 1978, as amended), E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.801, 2635.802, 2635.803, and 2635.805.

§ 9303.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, SIGAR employees are subject to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634; the executive branch regulations regarding outside employment at 5 CFR part 2636; and the regulations concerning executive branch financial interests contained in 5 CFR part 2640.

§ 9303.102 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section; or

(4) Providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(i) In which the United States is a party;

(ii) In which the United States has a direct and substantial interest; or

(iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(b) *Submission of requests for approval.* (1) Requests for approval shall be submitted in writing to SIGAR's Inspector General or Inspector General's designee through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom or for which the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with the employee's request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H (''Outside Activities'') of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by SIGAR's Inspector General or Inspector General's designee, in consultation with the General Counsel and the Director of Public

Affairs, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) ''*Active participant''* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) ''*Nonpublic information''* has the meaning set forth in 5 CFR 2635.703(b).

(3) ''*Professional services''* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) ''*Prohibited source''* has the meaning set forth in 5 CFR 2635.203(d).

(5) ''*Relates to the employee's official duties''* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

Dated: March 16, 2011.

Steven J. Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

Approved: March 20, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2012–8191 Filed 4–5–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0292; Directorate Identifier 2011–NM–056–AD; Amendment 39–16991; AD 2012–06–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

Correction

In rule document 2012–7008 appearing on pages 19071–19074 in the issue of March 30, 2012, make the following correction:

§ 39.13 [Corrected]

■ On page 19073, in § 39.13, beginning in the second column, in the 28th line from the bottom, remove the duplicate section ''(g) Inspection and Corrective Action in Fuel Tank Areas'' which ends in the third column, in the 24th line from the top.

[FR Doc. C1–2012–7008 Filed 4–5–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB75

Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines to require operators to identify violations of health or safety standards related to ventilation, methane, roof control, combustible materials, rock dust, other safeguards, and guarding, as listed in the final rule. Violations of these standards create unsafe conditions for underground coal miners. The final rule also requires that the mine operator record and correct violations of the nine safety and health standards found during these examinations. It also requires that the operator review with mine examiners on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The final rule will increase the identification and correction of unsafe conditions in mines earlier, and improve protection for miners in underground coal mines.

DATES: *Effective date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Regulatory Action

Effective preshift, supplemental, on-shift, and weekly examinations are the first line of defense to protect miners working in underground coal mines. After analyzing the Agency's accident reports and enforcement data for underground coal mines covering a 5-year period, MSHA determined that the same types of violations of health or safety standards are found by MSHA inspectors in underground coal mines every year and that these violations present some of the most unsafe conditions for coal miners. These repeated violations expose miners to unnecessary safety and health risks that should be found and corrected by mine operators. The final rule will increase the identification and correction of unsafe conditions in mines earlier, removing many of the conditions that could lead to danger, and improve protection for miners in underground coal mines.

Section 303 of the Federal Mine Safety and Health Act of 1977 (Mine Act), which retained without change the

language of the Federal Coal Mine Health and Safety Act of 1969, requires preshift [section 303(d)(1)], on-shift [section 303(e)], and weekly [section 303(f)] mine examinations for hazardous conditions; and preshift and weekly examinations for compliance with health or safety standards. The final rule is consistent with the provisions in the Mine Act that require examinations for compliance with health or safety standards in addition to hazardous conditions.

B. Summary of Major Provisions

The final rule revises MSHA's requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines to require operators to identify and correct violations of nine health or safety standards related to ventilation, methane, roof control, combustible materials, rock dust, other safeguards, and guarding, in addition to hazardous conditions. These nine standards are consistent with MSHA's ''Rules to Live By'' initiatives started in 2010 to prevent fatalities in mining. Violations of these nine standards represent the conditions or practices that, if uncorrected, present the greatest unsafe conditions and the most serious risks to miners. It is important to remind operators that if examiners observe other violations, they remain obligated, as they are under the existing standards, to address these violations. The final rule requires mine operators to record the actions taken to correct these violations.

The final rule, like the proposal, adds a new provision that requires the operator to review with mine examiners, on a quarterly basis, all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The questions and discussions that arise during the quarterly reviews will educate and enhance the skills and knowledge of the operators and the examiners to identify hazards and violations, resulting in continual improvement in the quality of mine examinations, the safety and health conditions in the mines, and protection for miners.

C. Costs and Benefits

MSHA estimates that the rulemaking will result in approximately $17.0 million in yearly costs for the underground coal mining industry. MSHA estimates that the monetized benefit to underground coal mine operators, in reduced fatalities and injuries, is approximately $21.3 million yearly, resulting in a net benefit of approximately $4.3 million yearly. MSHA estimates that, on average, the final rule will prevent approximately 2.4 fatalities and 6.4 lost-time injuries per year.

II. Introduction

A. Statutory and Regulatory History

Sections 303(d)(1), (e), and (f) of the Federal Mine Safety and Health Act of 1977 (Mine Act), which retained without change the language of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), set requirements for preshift, on-shift, and weekly examinations.

Section 303(d)(1) of the Mine Act requires that certified examiners conduct preshift examinations within 3 hours prior to the next shift. The preshift examinations are for specified hazards and for such other hazards and violations of the health or safety standards, as an authorized representative of the Secretary may from time to time require (30 U.S.C. 863(d)(1)). The purpose of the preshift examination is to identify and correct hazards and unsafe conditions, such as methane accumulations, water accumulations, and adverse roof conditions, before other miners travel underground to work their shift.

Section 303(e) of the Mine Act requires on-shift examinations for hazardous conditions (30 U.S.C. 863(e)). The purpose of the on-shift examination is to identify and correct hazards that develop during the shift.

Section 303(f) of the Mine Act requires weekly examinations for hazardous conditions and for compliance with health or safety standards (30 U.S.C. 863(f)). The purpose of the weekly examination is to identify and correct hazards and violations of standards that develop in remote and less frequently traveled areas of the mine, such as worked-out areas and bleeder entries that carry away methane. Methane accumulations in these areas could result in an explosion if they are not discovered and removed from the mine.

On November 20, 1970, MSHA issued a final rule for preshift, on-shift, and weekly examinations for hazardous conditions (35 FR 17890). The final rule restated the statutory provisions of the Coal Act, which were retained in the Mine Act.

On January 27, 1988 (53 FR 2382), MSHA issued a proposed rule to revise the requirements for preshift, on-shift, and weekly examinations and add a new requirement for supplemental examinations. After evaluating the comments, MSHA issued a final rule on May 15, 1992 (57 FR 20868). Neither the proposed rule nor the final rule included a requirement that mine examiners check for violations of health or safety standards.

On May 19, 1994, MSHA proposed revisions to the preshift examination standard (59 FR 26356) to require that examiners look for violations of health or safety standards that could result in a hazardous condition. The proposal had the potential to enhance safety by placing the mine operator in a proactive rather than a reactive role in finding and fixing conditions before hazards develop. After evaluating the comments, MSHA issued a final rule on March 11, 1996 (61 FR 97640). In response to comments, the final rule did not include the proposed requirement that a preshift examination include examining for violations of health or safety standards. In the preamble to the 1996 final rule, MSHA stated its intent that examiners focus their attention on critical areas and the identification of conditions that pose a hazard to miners.

After reviewing accident investigation reports from nonfatal accidents from 2005 through 2009, MSHA identified a direct link between violations of nine standards and accidents that resulted in injuries and fatalities. During that 5-year period, MSHA found that the accident reports for 12 fatalities and 32 nonfatal injuries listed violations of one or more of the nine standards addressed by the final rule as contributing factors. The data shows that when left uncorrected these violations can create hazardous conditions and lead to accidents resulting in injuries and fatalities. Based on the data and the Agency's experience, MSHA determined that only focusing on hazardous conditions would not provide effective safety for miners. MSHA concluded that because the violations of the nine standards in the final rule repeatedly contributed to accidents, fatalities and injuries, the final rule would provide the greatest protection for underground coal miners.

On December 27, 2010 (75 FR 81165), MSHA issued a proposed rule that would have required underground coal mine operators to identify violations of health or safety standards during preshift, supplemental, on-shift, and weekly examinations. The proposal would also have required that mine operators record and correct violations and review with mine examiners, on a quarterly basis, all citations and orders issued in areas where these examinations are conducted. The Agency received comments on the proposed rule and held five public hearings in June and July 2011. These hearings were held in Denver, Colorado;

Charleston, West Virginia; Birmingham, Alabama; Arlington, Virginia; and Hazard, Kentucky. The comment period closed on August 1, 2011.

B. Background Information

Underground coal mines are dynamic work environments where the working conditions change rapidly and without warning. Diligent compliance with safety and health standards and safety conscious work practices provide an effective measure of protection against unsafe and hazardous conditions that lead to accidents and emergencies in underground coal mines.

Effective examinations are the first line of defense to protect miners working in underground coal mines. At the beginning of the shift, miners in an underground coal mine are particularly vulnerable to hazards and dangerous conditions in the workplace that developed during the prior shift; the preshift and supplemental examinations are intended to protect miners from such hazards and dangerous conditions. This final rule revises MSHA's existing standards to require that operators examine for violations of health or safety standards in addition to hazardous conditions; it provides more effective underground coal mine examinations and increased safety and health protection for miners.

In developing the final rule, MSHA reviewed accident investigation reports, the Agency's enforcement data for underground coal mines covering a 5-year period, and the public comments received in response to the proposal. After analyzing the accident reports and enforcement data, MSHA determined that the same types of violations of health or safety standards are found by MSHA inspectors in underground coal mines every year. These repeated violations expose miners to unnecessary safety and health risks that should be found and corrected by mine operators. MSHA's review found that the most frequently cited standards accounted for about 50 percent of the total violations at underground coal mines in 2009 and that these violations present some of the most unsafe conditions in underground coal mines.

These violations include the following safety and health conditions: Accumulations of combustible materials; violations of ventilation and roof control plans; insufficient incombustible content of rock dust; improperly constructed airlock doors; or improperly maintained ventilation controls. Absent other conditions, such as a misaligned conveyor belt, an operator might not consider these to be hazardous conditions. However, conditions in underground coal mines change rapidly—a roof that appears adequately supported can quickly deteriorate and fall; stoppings can crush out and short-circuit air currents; conveyor belts can become misaligned or belt roller bearings can fail, resulting in an ignition source; and methane can accumulate in areas where it may not have been detected.

The final rule identifies violations of nine standards, which if left uncorrected, pose the greatest risk to miners' safety. Because the existence of these violations poses the greatest risk to miners, the mine operator is required to identify and correct them. Violations of the nine standards in the final rule can, individually or together, quickly lead to hazardous conditions, and ultimately to disastrous consequences. They represent the types of violations identified in MSHA's ''Rules to Live By'' initiatives, as well as some of the contributory violations in the Accident Investigation Report of the Upper Big Branch Mine disaster.

An accumulation of fine coal dust (fuel) in an underground air course, for example, contains sufficient oxygen for ignition and is lacking only a heat source to present an immediate fire hazard. In this situation, operators must remove the fuel source (fine coal dust) from the mine because an electrical arc or improperly maintained conveyor belt roller could provide the heat source and start a fire. Compliance with the health or safety standards (*e.g.,* for accumulations of combustible materials and maintenance of belt conveyors), in this instance, would provide two measures of safety—removing the fuel and heat source that could cause a fire.

III. General Discussion of Final Rule

Consistent with the Mine Act, this final rule revises MSHA's examination standards for underground coal mines to include a requirement that examiners conducting preshift, supplemental, on-shift, and weekly examinations identify not only hazardous conditions, but also violations of nine health or safety standards. In response to comments, MSHA has included those standards that represent nine of the most frequently cited violations by MSHA inspectors and are consistent with MSHA's Rules to Live By initiatives. These standards address unsafe conditions and hazards in underground coal mines that present dangers to miners. The final rule requires that mine examiners identify, record, and correct hazards and violations of these nine standards. It is important to remind operators that if examiners observe other violations, they remain obligated, as they are under the existing standards, to address these violations.

Many commenters opposed the proposed rule expressing concern that examinations for violations of all safety and health standards would diminish safety by distracting mine examiners from looking for the more serious hazardous conditions. These commenters noted that in previous rulemakings, after considering this same issue, MSHA decided against including this provision in the final rules. In support of their position, several commenters pointed to a statement in the preamble of MSHA's 1992 final rule in which the Agency stated that—

> * * * the final rule does not include a provision authorizing expansion of the preshift examination to include an examination for violations of mandatory standards. Most 'hazards' are violations of mandatory standards. (57 FR 20894, May 15, 1992)

Commenters supporting the proposed requirement to examine for all violations stated that the proposal addresses a deficiency in the existing standard. They noted that, under the existing standard, a mine examiner might not record and correct an obvious violation of a health or safety standard because the examiner does not believe the violation to be a hazardous condition. MSHA inspection experience indicates that, if the violation is not recorded, operators often fail to correct the violations until they are cited by an MSHA inspector.

In response to commenters who stated that the proposed rule would distract examiners from more serious conditions and those who stated that examiners would overlook obvious violations, the final rule specifies the health or safety standards that must be included in preshift, supplemental, on-shift, and weekly examinations. These standards represent conditions or practices that, if uncorrected, could present the most unsafe conditions and serious risks to miners in underground coal mines. MSHA has identified violations of these standards as contributing to numerous fatalities occurring between 2000 and 2009, and most were emphasized in MSHA's Rules to Live By initiative started in 2010 to prevent fatalities in mining.

Under the final rule, examiners must examine for hazardous conditions and violations of the following nine standards:

§§ 75.202(a) and 75.220(a)(1)—roof support and the mine roof control plan;

§§ 75.333(h) and 75.370(a)(1)—maintenance of ventilation controls and the mine ventilation plan;

§§ 75.400 and 75.403—accumulations of combustible materials and application of rock dust;

§ 75.1403—other safeguards, limited to maintenance of travelways along belt conveyors, off track haulage roadways, track haulage, track switches, and other components for haulage;

§ 75.1722(a)—guarding moving machine parts; and

§ 75.1731(a)—maintenance of belt conveyor components.

These standards represent the conditions or practices that, if uncorrected, would present the greatest unsafe conditions and the most serious risks to miners in underground coal mines. In addition, based on MSHA data and experience, these also represent violations that are frequently found by MSHA inspectors year after year.

Violations of standards included in the final rule are the types of violations that well-trained and qualified examiners can observe while conducting effective examinations. Under the existing standards, violations of these standards may have gone undetected and uncorrected where operators did not believe that they were hazardous conditions. The final rule will provide for a more effective approach to safety and health and add a necessary margin of safety in a particularly dangerous work environment. It will also result in more effective and consistent examinations which assure that hazardous conditions and violations of the standards in the final rule will be timely identified and corrected. The final rule will continue to reflect MSHA's intent under the existing standards that operators prioritize and correct violations based on the seriousness of the hazard.

The final rule requires operators to be more proactive in their approach to mine health and safety and to find and fix violations of health or safety standards in the final rule before they become hazardous. As a result, conditions that might have been identified only by MSHA inspectors will now be found and corrected by the operator, and a culture of safety will be fostered at the mine. The final rule will also promote this culture of safety by requiring operators to review with mine examiners, on a quarterly basis, citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The final rule will enhance miners' safety because violations of health or safety standards that present the greatest risks will be identified and corrected, removing many of the conditions that could lead to danger in underground coal mines.

IV. Section-by-Section Analysis

A. § 75.360 Preshift Examination at Fixed Intervals

The final rule revises the existing preshift examination standard to require operators to check for hazardous conditions and violations of nine health or safety standards in the rule. These standards represent areas which present unsafe conditions for miners where MSHA continues to find violations of safety and health standards. Consistent with the Mine Act, the final rule also provides that the District Manager may require examinations in other areas of the mine for hazardous conditions and for violations of safety or health standards, based on, for example, the violation history of the mine. Like the proposal, the final rule also requires operators to record hazards and all violations, along with the actions taken to correct them.

Some commenters were concerned that the proposed rule did not specify which standards in part 75 the mine examiners would be expected to identify and correct. They noted that while MSHA indicated that the proposed rule was intended to assure that violations of MSHA's most frequently cited standards were identified, the proposed rule language did not list those standards.

Several commenters suggested that MSHA include in the final rule language the violations of specific standards that examiners are expected to identify. Other commenters suggested that, if the proposal went forward, MSHA could limit the violations that examiners would look for to those covered by the Rules to Live By categories or conditions that are significant and substantial (S&S) violations. The nine standards specified in the rule are consistent with the standards identified in MSHA's Rules to Live By initiatives and derived from the ten most frequently cited standards discussed in the proposed rule and further analyzed in the preliminary regulatory economic analysis.

A number of commenters stated that there is not enough time allotted for preshift examinations to examine for all violations of the MSHA standards in 30 CFR part 75. Some commenters were concerned that, without allotting additional time for preshift examinations or limiting the list of standards they would be required to address, mine operators would be required to hire additional examiners. Some commenters indicated that mine examiners would need much more training to identify violations of all MSHA standards in part 75.

Commenters who supported the proposal stated that the rule addresses a deficiency in the existing standard because a mine examiner might not record and correct an obvious violation of a health or safety standard as the examiner might not believe the violation to be a hazardous condition. Other commenters were concerned that the proposal could place mine examiners in a difficult position. They noted that examiners could be disciplined or fired for missing some violations during their examinations even while they may be disciplined for finding many minor technical violations.

Commenters also stated that based on the proposed rule, a mine could get cited twice for the same violation—one citation for the violation of a health or safety standard and another citation for an inadequate examination. Under the existing regulation, operators must conduct required examinations and take required actions to comply with specific standards. The final rule does not change this existing requirement and enforcement practice.

Generally, at the beginning of an inspection, an inspector will review an operator's examination records. As is the case under the existing standard, recording a violation does not automatically result in a citation.

In the final rule, MSHA responds to commenters' concerns by including the requirement that operators conducting preshift examinations examine for violations of nine standards. Operators are, therefore, put on notice as to the specific violations that examiners must look for in their examinations. In this way, operators can better focus on conditions and practices that represent higher risks to miners in the time allotted for the preshift examination. Consistent with the Mine Act, under the final rule, operators remain responsible for all violations; responsible operators should have policies in place to find and fix all violations and record them.

As stated in the proposed rule, the final rule will require that operators conduct more thorough examinations of underground coal mines. By requiring examinations for violations of health or safety standards in the final rule, miners will be better protected because mine operators will correct unsafe conditions before they result in hazardous conditions. Mine operators must identify hazards and violations of the nine standards, and record these and violations of other health or safety standards found during their examination in the examination records; the operator must assure that they are corrected. Under the final rule, however, operators are not required to

have examiners perform additional tests, take additional measurements, or open and examine equipment or boxes.

The mine operator is required by § 75.220(a)(1) to develop and follow a roof control plan and by § 75.370(a)(1) to develop and follow a mine ventilation plan approved by the District Manager. These plans are mine-specific and can sometimes be comprehensive and complex. MSHA expects that the operator will assure that the examiner should have broad knowledge of these plans.

Unlike the proposal, the final rule does not require operators to have examiners to look for violations of § 75.1725(a) related to mobile and stationary machinery and equipment (one of the most frequently cited standards). Many commenters opposed inclusion of this standard stating that it would require examiners to check permissibility, brakes, and electrical components. They stated that such tasks are beyond an examiner's knowledge and skills and that such tasks would consume most of the time allotted to conduct preshift examinations. In addition, they pointed out that other standards require the examination of mobile and stationary machinery and equipment and that adding a similar requirement to the preshift examination would be duplicative and unnecessary. Although § 75.1725(a) was part of the Rules to Live By I, available on MSHA's Web site at *http://www.msha.gov/focuson/RulestoLiveBy/RulestoLiveByI.asp,* the types of accidents in which the standard was cited would likely not have required a preshift, supplemental, on-shift, or weekly examination of the equipment involved.

In response to comments, the final rule does not include § 75.1725(a). MSHA's existing standards address the examination and maintenance of mobile and stationary machinery and equipment; this will provide necessary protection for miners.

Commenters who supported requiring operators to identify all violations stated that this would relieve examiners of the burden of determining whether a health or safety violation is hazardous at the time it is discovered, so that miners will be better protected. They added that the proposal would allow operators to learn about such conditions at an earlier time and abate the violations before they ever become hazardous. They stated that a requirement to identify and record all violations of health and safety standards instead of only those violations believed to be hazardous would simplify the examiner's task and make it more straightforward.

In response to these comments, the final rule requires operators to look for violations of nine safety or health standards which MSHA believes present unsafe conditions and risks to miners. Operators who examine for hazardous conditions and violations of the health or safety standards in the final rule will provide a safer workplace for their miners.

Some commenters were concerned that mine examiners would not be trained to recognize violations of all MSHA standards. Commenters stated that mine examiners are trained by state agencies, not MSHA, and none of the states require examinations to identify every condition that violates a standard. They pointed out that mine examiners are trained to recognize certain hazards. They were concerned that the proposal would require certified examiners to act as MSHA inspectors despite the lack of training on identifying violations of all health or safety standards.

As stated at the public hearings, operators are responsible under the Mine Act for finding and fixing violations of safety and health standards. Historically, MSHA accepted State certifications for mine examiners. The final rule addresses hazardous conditions required under the existing rule and violations of health or safety standards. Since violations of the nine standards generally relate to hazardous conditions covered by the existing rule, MSHA believes that the final rule will have only a minimal effect on states.

In response to questions from the MSHA Panel at the public hearings, some commenters provided information as to how they examine for violations of safety and health standards. The examinations in this final rule should represent only part of an operator's program for finding and fixing violations. Since this final rule requires examinations for hazards and violations of nine safety or health standards which present unsafe conditions and risks to miners, MSHA does not believe that there is a need for any additional requirement for training mine examiners. In addition, MSHA believes that the new requirement in § 75.363(e) (that the operator review with examiners on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required discussed elsewhere in the preamble), when conducted properly, provides examiners with necessary instruction to identify hazards and violations.

The final rule makes conforming changes to the existing requirement in § 75.360(a)(2) that allows pumpers, who are certified persons, to perform the preshift examination for themselves. Under the final rule, examinations conducted by pumpers must include hazardous conditions and violations of the nine standards. Like the existing rule, pumpers often work alone in remote areas of the mine. MSHA expects that the pumper would examine for hazardous conditions and violations of the nine standards. The pumper must record hazardous conditions and violations of the nine health or safety standards found during the preshift examination.

Some commenters addressed proposed § 75.360(e) that would permit the District Manager to require examinations in other areas of the mine for other hazards or violations of safety or health standards. Most of those commenters stated that this would add to the existing burden on both the District Managers and mine operators. Commenters were concerned that this would give the District Manager broad powers to dictate additional areas, other hazards, or violations to be examined by certified persons. Under the existing standard, the District Manager may require the certified person to examine other areas of the mine or examine for other hazards during the preshift examination.

It was the intent of Congress in the Mine Act and MSHA in the existing standard that the District Managers have the discretion to require additional examinations as necessary. MSHA's experience reveals that District Managers rarely exercise this discretion. Therefore, MSHA does not believe that this provision will result in additional costs. Consistent with the Mine Act, like the proposal, the final rule revises this provision to allow the District Manager to require additional examinations based on, among others, the violation history of the mine.

For example, if a mine is experiencing safety issues and violations due to obstructed walkways on the off side of the belt conveyor, it would be appropriate for the District Manager to require that the mine operator focus on this area. Most operators do not routinely examine the off side of the belt conveyor, but there are occasions when miners are required to work or travel on the off side, such as to align the belt, replace a roller, or remove accumulations. As another example, the District Manager may require a mine operator to verify that battery charging stations are adequately ventilated if a mine operator has received violations of § 75.340(a)(1)(i) for failure to ventilate battery charging stations with intake air that is directly coursed into a return air course or to the surface or with air that

is not used to ventilate working places. MSHA believes that this provision is consistent with the Mine Act and is necessary to protect the safety and health of miners.

A number of commenters were concerned about the recordkeeping requirements in proposed §§ 75.360(g), 75.363(a) and (b), and 75.364(h). Although commenters recognized the importance of recordkeeping, some were concerned that the proposal would increase recordkeeping dramatically.

MSHA understands that the final rule will increase recordkeeping requirements. The final rule requires that the operator focus on nine standards which present the greatest risks to miners in underground coal mines.

B. § 75.361 Supplemental Examination

The final rule revises existing § 75.361(a) to require that the supplemental examination identify hazards and violations of nine standards to provide necessary protection for miners. As with the existing rule, operators cannot ignore violations of other standards seen during the examination. As discussed above, in response to comments, MSHA is adding language to make clear which violations operators are required to identify. The same language referencing these standards is also being added to the final requirements for preshift, on-shift, and weekly examinations.

C. § 75.362 On-Shift Examination

The final rule revises existing § 75.362(a)(1) and (b) to require that the mine operators identify hazards and violations of the nine standards during any shift when anyone is assigned to work on the section and where mechanized mining equipment is being installed or removed. Like the existing rule, operators cannot ignore violations of other standards seen during the examination. As discussed above, in response to comments, the final rule clarifies that operators are required to look for violations of nine standards, in addition to hazards, while also recording and correcting violations of other standards when they see them.

D. § 75.363 Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting, and Recording

The final rule revises existing § 75.363 to require the mine operator to post hazardous conditions, correct, and record hazardous conditions and violations of all health or safety standards found during preshift, supplemental, on-shift, and weekly examinations and record the corrective actions taken. The final rule also includes a new requirement in § 75.363(e) that the operator review with examiners, on a quarterly basis, all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. MSHA expects that, during the review, the operator and examiners would discuss the violations found since the previous review.

Some commenters were concerned about the recordkeeping requirements in proposed §§ 75.363(a) and (b) and 75.364(h); those comments were addressed above under the discussion of recordkeeping in § 75.360(g).

Commenters suggested that MSHA clarify what the Agency meant when it stated in the preamble that operators would have to correct violations within a reasonable time. They indicated that without such clarification, there could be a range of interpretations about what would be reasonable and whether this would be determined by the MSHA inspector or the company.

In the final rule, MSHA has not included a time frame for correcting violations but is relying on the Agency's historical practice related to mine operators' correction of violations. Consistent with its position in the preamble to the proposed rule, MSHA anticipates that operators will correct violations within a reasonable time period based on the conditions and circumstances at the mine. The mine operator is in the best position to determine the resources necessary to correct a violation including the time frame. If resources and personnel are available to correct a violation, the violation should be corrected at that time.

For example, a mine examiner is conducting an examination of a belt conveyor entry and identifies a broken roller as a violation. It is not generating any heat or sparks and, therefore, does not pose a hazard. To prevent the broken roller from becoming a potential fire hazard, the mine examiner removes the roller assembly. The mine examiner completes the examination of the belt conveyor entry and returns to the surface. The condition ''damaged roller—needs replaced'' is entered into the preshift examination book. The mine operator must order a new roller assembly, which will take two days to obtain and install. The mine operator places an order for the roller assembly and has the purchase order available for review by the inspector. The roller is ordered and replaced when it is received. In this particular example, the mine operator would not receive a citation.

Some commenters opposed proposed § 75.363(e), the requirement for quarterly reviews of citations and orders. They stated that quarterly meetings to review citations and orders with mine examiners are not needed because all citations are required to be posted in a conspicuous area. Other commenters supported the proposed requirement. They agreed that it makes sense to make mine examiners aware of citations, orders, and violations identified by inspectors in areas where examinations are required so the examiners can improve identification of recurring violations. Therefore, if citations and orders are being issued for violations other than the nine standards identified in the rule, the mine examiner will be better able to find and correct those violations as well.

MSHA believes that the final rule will result in continual improvement in the quality of mine examinations in underground coal mines and a greater level of protection for underground coal miners. The questions and discussions that arise during the quarterly reviews will educate operators and examiners and enhance their skills and knowledge.

E. § 75.364 Weekly Examination

The final rule revises the weekly examination standard to require operators to examine for hazards and violations of the nine standards to provide greater protection for miners. The operator must look for violations of the nine standards listed in the final rule, but also record and correct violations of other health or safety standards when they see them.

The weekly examination involving § 75.1403 will require operators to address maintenance of track haulage, off track haulage roadways, track switches, and other components for haulage. Since weekly examinations are required in worked out areas, bleeder entries, and air courses where equipment and conveyor belts are not typically installed, mine examiners are unlikely to encounter conditions related to § 75.1403—other safeguards, maintenance of travelways along belt conveyors; § 75.1722(a)—guarding moving machine parts; and § 75.1731(a)—maintenance of belt conveyor components.

The final rule includes conforming changes to require the identification, recording, and correcting of hazardous conditions and violations of the nine health or safety standards found during the weekly examinations.

V. Executive Orders 12866 and 13563: Regulatory Planning and Review

MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Population at Risk

The final rule applies to all underground coal mines in the United States. The number of underground coal mines that MSHA used to estimate the cost of the final rule is the quarterly average of underground coal mines that reported employment underground at any time during 2010 regardless of production. Underground mines that only reported employment at the surface were not included since the examinations covered by this final rule are only performed when miners are working underground. The number of employees reflects the average underground employment at these mines for the year.

There are approximately 549 underground coal mines employing 51,706 miners, excluding office workers. Table 1 presents the number of underground coal mines and employment by mine size.

TABLE 1—UNDERGROUND COAL MINES AND MINERS, 12-MONTH AVERAGE AS OF JANUARY 2011, BY MINE SIZE

Mine size	Number of underground coal mines	Total employment at underground coal mines, excluding office workers
1–19 Employees	172	1,676
20–500 Employees	366	33,036
501+ Employees	11	6,748
Contractors	.....	10,246
Total	549	51,706

Source: MSHA MSIS Data (December 16, 2011).

Underground coal mines produced an estimated 337 million short tons of coal in 2010. The average price of coal in underground mines in 2010 was $60.73 per short ton (Department of Energy (DOE), Energy Information Administration (EIA), *Annual Coal Report 2010,* November 2011, Table 28). Table 2 presents coal production and estimated revenues for 2010.

TABLE 2—COAL PRODUCTION IN SHORT TONS AND COAL REVENUES IN 2010 FOR UNDERGROUND COAL MINES

Mine size	Coal production (short tons)	Coal revenue (dollars)
1–19 Employees	3,687,255	$223,890,124
20–500 Employees	247,441,842	$15,024,668,646
501+ Employees	86,219,427	$5,235,243,607
Total	337,348,524	$20,483,802,377

B. Benefits

One of MSHA's primary goals with this rulemaking is to reduce violations of health or safety standards that occur in underground coal mines year after year. These violations ultimately lead to accidents, injuries, and illnesses. This section presents a summary of the potential benefits resulting from final rule changes to requirements for preshift, supplemental, on-shift, and weekly examinations in underground coal mines.

For informational purposes, MSHA provides estimates of monetized potential benefits of the final rule. Under the Mine Act, MSHA is not required to use monetized benefits or estimated net benefits as the basis for its decisions on standards designed to protect the health and safety of miners.

Based on the estimated prevention of 2.4 fatalities and 6.4 lost-time injuries per year, MSHA estimates that the final rule could result in monetized benefits of up to $21.3 million per year (2.4 × $8.7 million + 6.4 × $62,000). An explanation of the methodology MSHA relied upon to calculate the monetized benefits is presented towards the end of the benefits section.

To derive the estimated number of preventable injuries and fatalities used above, MSHA reviewed accident investigation reports from 2005 through 2009 where an inadequate examination of the underground work area contributed to the accident. MSHA further looked to see how many of those accidents involved, as a contributing factor, violations of nine standards cited by MSHA inspectors year after year.

Over the 5-year review period, there were 91 fatalities in underground coal mines. Of this total, the investigation reports for 15 of the fatalities (11 reports) specifically listed violations of the preshift, supplemental, on-shift, or weekly examinations standards as factors contributing to the accident. Although these fatalities involved conditions exposing risks to miners and violations of existing standards, the examiners did not perceive them as hazardous conditions. MSHA determined that only focusing on hazardous conditions would not provide effective safety for miners. Under the final rule, mine operators would be required to identify and correct these violations in addition to hazardous conditions.

Based on MSHA's review and the findings explained below, the final rule requires the examiner to identify and record, and the operator to correct, violations of the nine standards listed in the final rule that are found during preshift, supplemental, on-shift, or weekly examinations.

After analysis of the 15 fatalities, MSHA determined that nine of them involved violations of one or more of the health or safety standards listed in the final rule. MSHA concluded that, if these violations had been identified and corrected as required by the final rule, these nine fatalities, or approximately

two fatalities per year (9 fatalities/5 years) could have been prevented.

MSHA also examined the fatal investigation reports that did not list violations of the preshift, supplemental, on-shift, or weekly examinations standards as contributing to the accident to determine if a violation of any of the nine standards in the final rule was listed as a contributing cause of the accident. Based on its review of these reports, MSHA determined that three additional fatalities could have been prevented by identifying violations of one or more of the nine standards and taking necessary corrective actions. Based on the frequency of the required examinations, MSHA believes that the examiner could have identified the violations during either the preshift or on-shift examination, triggering corrective action. Thus, MSHA estimates that the final rule could have prevented a total of up to 12 fatalities or 2.4 fatalities per year.

MSHA estimates that the final rule could have prevented 13 percent of the 91 fatalities that occurred in underground coal mines during the 5-year review period (12/91 fatalities). The fatal investigation reports for all 12 fatalities are included in the rulemaking docket at *www.regulations.gov.*

In addition to reducing the number of fatalities, the final rule also could reduce the number of injuries. For the 5-year review period, 2005 through 2009, MSHA reviewed the descriptions of 75 accidents involving 90 nonfatal injuries where the citation or order listed an inadequate examination, or a violation of one or more of the nine standards in the final rule, or both, as a contributing cause of the accident. Based on this review and its experience in investigating accidents, MSHA determined that the final rule could have prevented 32 nonfatal injuries or approximately 6.4 nonfatal injuries per year (32 nonfatal injuries/5 years).

Violations of the standards listed in the final rule create unsafe conditions for underground coal miners and are directly linked to fatalities and injuries. The final rule includes a new requirement in § 75.363(e) that the operator review with examiners, on a quarterly basis, all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. This new requirement may provide qualitative benefits that increase over time.

MSHA expects that, during the review, the operator and examiners would discuss any hazards or violations found since the previous review. MSHA believes that the questions and discussions that arise during the quarterly reviews will educate and enhance the skills and knowledge of the operators and the examiners. This provision will promote a culture of safety, resulting in a continual improvement in the quality and effectiveness of mine examinations. This will ultimately lead to an overall improvement in compliance with health and safety standards at the mine, and provide a greater level of protection for underground coal miners. Furthermore, if the examinations and corrective actions are applied effectively, individual operators may see some reductions in the time and administrative staff associated with violations of mandatory health or safety standards.

Based on the nature of the standards in the final rule, MSHA believes that the final rule will also reduce respirable dust exposures in underground coal mines and reduce the incidence of black lung. According to a recent NIOSH report (2010), ''[v]entilating air to a * * * mining section, whether blowing or exhausting, is the primary means of protecting workers from overexposure to respirable dust.'' Mine examinations are critical to ensuring that all of the requirements in the mine ventilation plan, including the dust control plan, are in place and working. Examiners check section and outby ventilation controls and the respirable dust control parameters, which are key factors in reducing miners' exposure to respirable coal mine dust. The final rule will provide better identification and correction of violations of the ventilation standards. This, in turn, should lower miners' exposure to respirable coal mine dust, thereby lowering the incidence of black lung and other respiratory diseases. MSHA also is engaged in a separate rulemaking (RIN 1219–AB64, 75 FR 64412) that directly addresses miners' exposure to respirable coal mine dust. Due to lack of data, MSHA is unable to incrementally quantify the reduced incidence of disease attributable to this final rule alone.

MSHA based its estimates of the monetary values for the benefits on relevant literature. To estimate the monetary value of the reduction in fatalities, MSHA performed an analysis of the value of fatalities avoided based on a willingness-to-pay approach. This approach relies on the theory of compensating wage differentials in the labor market, (*i.e.,* the wage premium paid to workers to accept the risks associated with various jobs). A number of studies have shown a correlation between higher risk on a job and higher wages, suggesting that employees demand monetary compensation in return for incurring a greater risk of injury or death.

Viscusi & Aldy (2003) conducted an analysis of studies that use a willingness-to-pay methodology to estimate the value of life-saving programs (*i.e.,* meta-analysis) and found that each fatality avoided was valued at approximately $7 million and each lost work-day injury was approximately $50,000 in 2000 dollars. Using the Gross Domestic Product (GDP) Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of $8.7 million for each fatality avoided and $62,000 for each lost work-day injury avoided in 2009 dollars. This value of a statistical life (VSL) estimate is within the range of the substantial majority of such estimates in the literature ($1 million to $10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003).

Although MSHA is using the Viscusi & Aldy (2003) study as the basis for monetizing the expected benefits of the final rule, the Agency does so with several reservations, given the methodological difficulties involved in estimating the compensating wage differentials (Hintermann, Alberini, and Markandya, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by coal miners. For example, some have suggested that VSL models be disaggregated to account for different levels of risk, as might occur in coal mining (Sunstein, 2004). In addition, coal miners may have few employment options and in some cases only one employer (near-monopsony or monopsony), which may depress wages below those in a more competitive labor market.

MSHA recognizes that monetizing the VSL is difficult and involves uncertainty and imprecision. In the future, MSHA plans to work with other agencies to refine the approach taken in this final rule.

A number of commenters disputed MSHA's analysis of the 11 fatal accident investigation reports discussed in the benefits section of the preamble to the proposed rule. One of these commenters noted that the report does not say how the investigators determined that the violations were present during the mine examinations. Another said that their review of the accident reports led them to disagree with MSHA's conclusion that the fatal injuries would have been prevented by examinations that identified violations as well as hazards.

Another commenter who reviewed the fatality reports stated that their analysis led them to conclude that the

Agency's claims that nine of the 15 cited fatalities could have been prevented by examinations for violations of health or safety standards was not supportable. One commenter stated that it was not sound logic to conclude that if the violation had been identified by the examiner the accident would not have happened. He added that, in general, MSHA cites a condition or practice that caused the accident because something went wrong, but he noted that it is easy to point the finger after an accident. A number of commenters agreed that conditions often change after examinations are done.

A number of commenters addressed the potential benefits that MSHA indicated would be achieved if the proposed provisions were made final. A commenter who supported the proposed provisions said that, in their entirety, the data reveal that some accidents and injuries could have been avoided if the examiners had reported violations of standards as well as hazardous conditions. Another stated that MSHA needed to be more specific as to what it wants and what benefits MSHA thinks will be gained from the regulation. Others were uncertain about the data and experience MSHA relied on for these calculations, and suspected that the calculations were hugely understated.

As explained above, MSHA used accident reports that specifically listed violations of nine standards to derive the estimated benefits of the final rule. While the Agency feels that these accident reports best represent the types of violations that lead to injuries and fatalities, MSHA realizes that operators may find and correct violations of standards that were not considered when the Agency estimated the potential benefits and as a result the benefits above may be understated.

In this regulatory economic analysis section, MSHA provides estimated potential benefits of the final rule. MSHA includes supporting data for its estimates of benefits and describes the methodology used to derive those benefits. MSHA also has included two links in the benefits section where interested parties can view the raw data-sets that the Agency relied on for the analysis and determination of the estimated benefits.

C. Compliance Costs

Table 3 below presents the summary of annual costs for all underground coal mine operators. MSHA's response to comments on the economic analysis in the proposed rule and a summary cost analysis for anthracite mines can be found at the end of this cost analysis section.

TABLE 3—SUMMARY OF ANNUAL COSTS TO ALL UNDERGROUND COAL MINE OPERATORS

Requirement	Number of employees			Totals
	1–19	20–500	501+	
75.360 Pre-Shift Exam	$1,460,000	$9,300,000	$490,000	$11,250,000
75.361 Supplemental Exam	6,400	81,100	2,400	89,900
75.362 On-Shift Exam	343,000	4,205,000	267,000	4,815,000
75.363(e) Review of Citations and Orders	31,000	448,000	69,000	548,000
75.364 Weekly Exam	79,000	169,000	5,000	253,000
Totals	1,919,400	14,203,100	833,400	16,955,900

The annualized benefits are $21.3 million while the annualized costs are $17.0 million. The estimates remain unchanged between years so changing the time period or the discount rate results in the same values over time or rate changes.

As stated previously in the industry profile section, MSHA used the quarterly average of active mines (549) that reported underground employment to estimate the costs for preshift, supplementary and weekly examinations because these examinations are only performed when miners are working underground. To estimate the cost for the on-shift examination, MSHA used the quarterly average of active mines reporting production (424) because on-shift examinations are typically performed on production shifts. MSHA used a conservative approach in estimating costs and as a result the cost figures may be overstated. This update to the number of mines resulted in an increase in total costs but not at the same rate of increase. The net effect is that the cost per mine is lower in the final rule than was presented in the proposed rule.

Because the examinations covered by this final rule are only performed when miners are working underground MSHA limited the cost estimates to mines that reported underground employment. MSHA is aware that, because of changing conditions and differing production schedules, not every mine with underground employment will perform each of the examinations nor will every mine perform them year-round; however, for the purpose of estimating average yearly costs, MSHA has assumed that mines with underground employment will perform each of the examinations year-round.

For the purpose of this analysis, MSHA estimates that preshift and on-shift examinations would be conducted by a supervisory certified examiner (paid an hourly rate of $84.69, including benefits); and that the supplemental and weekly examinations would be conducted by non-supervisory certified examiners (paid an hourly rate of $36.92, including benefits). MSHA also estimates that—

- Mines with 1–19 employees operate one shift per day, 200 days per year;
- Mines with 20–500 employees operate two shifts per day, 300 days per year; and
- Mines with 501+ employees operate three shifts per day, 350 days per year.

Preshift Examination at Fixed Intervals—Final § 75.360

Final § 75.360 requires examiners conducting preshift examinations to identify violations of nine standards, in addition to examining for hazards, and record all violations found along with the corrective actions taken. MSHA estimates that it will take an examiner an additional 30 minutes (0.5 hr) per preshift examination to identify and record these violations and the corrective actions taken. Although the final rule narrows the scope of the preshift examination, from requiring the examiner to identify violations of all standards to requiring the examiner to identify violations of nine standards, the time estimates for the proposal were based on violations of ten of the most frequently cited standards by MSHA inspectors. MSHA, therefore, is using the same estimate for additional

examination time (0.5 hr) as used in the proposed rule.

MSHA estimates that the additional time required for the preshift examinations will result in costs of approximately $11.3 million:

- $1.5 million in mines with 1–19 employees (172 mines × 1 exam/day × 200 days/yr × 0.5 hr × $84.69/hr);
- $9.3 million in mines with 20–500 employees (366 mines × 2 exams/day × 300 days/yr × 0.5 hr × $84.69/hr); and
- $500,000 in mines with 501+ employees (15 mines × 3 exams/day × 350 days/yr × 0.5 hr × $84.69/hr).

Supplemental Examination—Final § 75.361

Final § 75.361 requires examiners conducting supplemental examinations to identify violations of nine standards, in addition to identifying hazards. MSHA estimates that it will take an examiner an additional 15 minutes (0.25 hr) to identify and record these violations and the corrective actions taken. Supplemental examinations are only performed in areas where a preshift examination has not been conducted. MSHA estimates that examiners would perform four supplemental examinations per year at mines with 1–19 employees and 24 supplemental examinations per year at mines with 20–500 employees and 501+ employees.

MSHA estimates that the additional time required for supplemental examinations will result in costs of approximately $90,000:

- $6,400 in mines with 1–19 employees (172 mines × 4 exams/mine × 0.25 hr/exam × $36.92/hr);
- $81,000 in mines with 20–500 employees (366 mines × 24 exams/mine × 0.25 hr/exam × $36.92/hr); and
- $2,400 in mines with 501+ employees (11 mines × 24 exams/mine × 0.25 hr/exam × $36.92/hr).

On-Shift Examination—Final § 75.362

Final § 75.362 requires examiners conducting on-shift examinations to identify violations of nine standards, in addition to identifying hazards. MSHA estimates that it would take an examiner an additional 15 minutes (0.25 hr) to identify and record these violations and the corrective actions taken. Because on-shift examinations are performed during each production shift, MSHA used the quarterly average of active mines reporting production (424) to estimate the costs below.

MSHA estimates that the additional time required for on-shift examinations will result in estimated costs of approximately $4.8 million:

- $343,000 in mines with 1–19 employees (81 mines × 1 shift/day × 200 days/yr × 0.25 hr/shift × $84.69/hr);
- $4.2 million in mines with 20–500 employees (331 mines × 2 shifts/day × 300 days/yr × 0.25 hr/shift × $84.69/hr); and
- $267,000 in mines with 501+ employees (12 mines × 3 shifts/day × 350 days/yr × 0.25 hr/shift × $84.69/hr).

Hazardous Conditions and Violations of Health or Safety Standards; Posting, Correcting, Recording, and Reviewing—Final § 75.363(b) and (e)

Final § 75.363(b) requires examiners to record all violations noted and the corrective actions taken for supplemental and on-shift examinations (preshift and weekly examinations have separate recordkeeping requirements and are not covered by this provision). The costs associated with this final requirement are included in cost estimates for final §§ 75.361 and 75.362 above.

Final § 75.363(e) is a new provision that requires the operator to review with mine examiners, on a quarterly basis, citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. MSHA estimates that 80 percent of underground coal mine operators currently discuss violations with examiners. Although some operators and examiners may meet less frequently and some more frequently, for costing purposes, MSHA assumes that these operators and examiners are meeting on a quarterly basis.

MSHA estimates that approximately 20 percent of mine operators do not currently discuss violations with examiners and would, therefore, incur new costs from this provision. MSHA estimates that 84 agents of the operators, 641 examiners for preshift and on-shift examinations, and 159 examiners for weekly and supplemental examinations would need to review the citations and orders as follows:

- 34 agents, 49 preshift and on-shift examiners, and 17 weekly and supplemental examiners in mines with 1–19 employees;
- 73 agents, 530 preshift and on-shift examiners, and 132 weekly and supplemental examiners in mines with 20–500 employees; and
- 2 agents, 62 preshift and on-shift examiners, and 10 weekly and supplemental examiners in mines with 501+ employees.

MSHA also estimates that these reviews would take 1 hour in mines with 1–19 employees, 2 hours in mines with 20–500 employees, and 4 hours in mines with 501+ employees.

Examiners on preshift and on-shift exams are supervisory certified examiners earning an hourly wage of $84.69 and examiners on weekly and supplemental exams are non-supervisory certified examiners earning an hourly wage of $36.92. MSHA estimates the operator's agent conducting the review earns an hourly wage of $84.69.

MSHA estimates that these quarterly reviews will result in costs of approximately $548,000 per year:

- $31,000 in mines with 1–19 employees [(34 agents + 49 examiners) × $84.69/hr × 4 mtg × 1 hr/mtg] + [17 examiners × $36.92/hr × 4 mtg × 1 hr/mtg];
- $448,000 in mines with 20–500 employees [(73 agents + 530 examiners) × $84.69/hr × 4 mtg × 2 hr/mtg] + [132 examiners × $36.92/hr × 4 mtg × 2 hr/mtg]; and
- $69,000 in mines with 501+ employees [(2 agents + 62 examiners) × $84.69/hr × 4 mtg × 4 hr/mtg] + [10 examiners × $36.92/hr × 4 mtg × 4 hr/mtg].

Weekly Examination—Final § 75.364

Final § 75.364 requires operators to conduct examinations at least every 7 days to identify and record hazards and violations of nine health or safety standards.

MSHA estimates that it will take a certified examiner an additional 15 minutes (0.25 hr) to identify and record violations of standards and the corrective actions taken and that, on average, mines operate for 50 weeks per year.

The additional time required for weekly examinations for violations will result in costs of approximately $253,000 per year:

- $79,000 in mines with 1–19 employees (172 mines × 50 wk/yr × 0.25 hr/wk × $36.92/hr);
- $169,000 in mines with 20–500 employees (366 mines × 50 wk/yr × 0.25 hr/wk × $36.92/hr); and
- $5,000 in mines with 501+ employees (11 mines × 50 wk/yr × 0.25 hr/wk × $36.92/hr).

Costs for Corrective Actions

MSHA's cost estimates for recording corrective actions for hazards or violations found during preshift, supplemental, on-shift, and weekly examinations do not include costs for any corrective actions taken to eliminate the hazardous condition or comply with the health or safety standard identified during the mine examination. These compliance costs were included in the cost estimates associated with the existing standards and are not new

compliance costs resulting from this final rule. Rather than waiting for violations to be either identified by an MSHA inspector or rise to the level of a hazardous condition and be identified by a mine examiner, the final rule requires mine operators to identify violations found during mine examinations.

MSHA estimates that the final rule could prevent some accidents because mine operators will be required to take corrective actions earlier than under the existing standards, *i.e.,* before a hazardous condition develops or before they are cited by MSHA inspectors. Although the final rule will result in operators taking corrective actions promptly, before the violation develops into a hazard, it will not increase the costs of the corrective actions. MSHA requires mine operators, if cited, to correct a violation of a health or safety standard, such as removing coal dust accumulations from conveyor belts or maintaining ventilation controls for their intended purpose, to abate the citation. The MSHA inspector determines the time for abating the violation. If the violation is a hazardous condition, MSHA requires it to be corrected immediately.

Impact on the Time Needed To Complete Examinations and Numbers of Examiners

A number of commenters were concerned that the final rule will force companies to hire additional personnel to meet the requirements of the proposed examinations provisions. One commenter pointed out that, if examiners were compelled to walk both sides of conveyor belts, it would require twice the time or two examiners for preshift examinations. Another stated that the cost of the proposed requirements are more than the cost analysis in the proposed rule shows, and provided detailed estimates for all four mine examinations. This commenter estimated that it would take an additional half-hour for a preshift examination per working section, and at their mine with three working sections, they would need an additional preshift examiner per shift. The commenter added that the mine is new, and examination times for short travel distances and belt lengths will increase as the mine develops.

In response to commenters, MSHA has narrowed the scope of the final rule from the proposal to match what MSHA originally intended and what was originally assumed in the analysis in the proposed rule. The final rule requires examiners to look for hazardous conditions and violations of nine standards. Under the final rule, MSHA intends that the examiner focus on those violations that present the most unsafe conditions. It is important to remind operators that, however, if examiners observe other violations, they remain obligated, as they are under the existing standards, to address these violations.

The existing rule requires that the preshift examination be conducted within 3 hours of the beginning of the oncoming shift, but most preshift examinations do not take the whole 3 hours. All the estimates of time, number of shifts, and working sections that MSHA uses in this cost section are the averages for all underground coal mines in a given size category and are not meant to be exact measurements for any individual mine.

As stated previously, MSHA does not intend that the final rule expand the examination to require additional tests or additional measurements, or to require examiners to open and examine equipment or boxes. MSHA expects the mine examiner to look for violations of these nine standards as they conduct their examinations and to complete the entire examination in the time allotted without the need for additional examiners.

Anthracite Coal Mines

In addition, several comments stated the need for a separate economic analysis of underground anthracite coal mines. One commenter indicated that the economic hardship on the anthracite underground mining community far exceeds the MSHA published figure of 0.43 percent of annual revenues for small mines with 1–19 employees and 0.12 percent for mines with 20–500 employees. The commenter provided several calculations to show that the economic impact on underground anthracite coal mines would be 36.1 percent of annual revenues for anthracite mines with 1–19 employees and 43.7 percent of annual revenues for anthracite mines with 20–500 employees.

In response to these comments, MSHA reviewed the commenter's calculations and found that, while the calculations used only revenues from anthracite mines, the cost estimates included the cost to all mines instead of the cost to anthracite mines only. Thus, the percentages of costs relative to revenues are overstated.

MSHA conducted a separate and more detailed analysis of the economic impact of the final rule on underground anthracite coal mines. Table 4 below summarizes industry data for underground anthracite coal mines.

TABLE 4—UNDERGROUND ANTHRACITE COAL MINES, 2010 QUARTERLY AVERAGE AS OF JANUARY 2011, BY MINE SIZE

Mine size	Total number Mines	Total number Miners	Production (short tons)	Revenues ($59.51/ short ton)
1–19 Miners	8	52	39,724	$2,363,975
20–500 Miners	1	36	98,930	5,887,324
Total	9	88	138,654	8,251,300

Because anthracite mines are generally smaller than most bituminous mines and most violations of the standards in this final rule typically are not the types of conditions that are most cited found at underground anthracite underground mines, MSHA estimates that examination and recordkeeping times would be less for anthracite mines than the average used for all underground coal mines. After conducting this separate analysis with more accurate examination time estimates for anthracite mines, MSHA has determined that the cost of the final rule for anthracite mines will not exceed 1 percent of total anthracite coal mine revenues and will be economically feasible.

MSHA has included the results of the Agency's separate anthracite cost analysis for each provision in the final rule. Table 5 below presents the summary cost data for underground anthracite coal mines.

TABLE 5—SUMMARY OF ANNUAL COSTS TO UNDERGROUND ANTHRACITE COAL MINE OPERATORS

Requirement	Number of employees		Totals
	1–19	20–500	
75.360 Preshift Exam	$20,000	$10,000	$30,000
75.361 Supplemental Exam	50	40	90
75.362 On-Shift Exam	10,000	4,200	14,200
75.363(e) Review of Citations and Orders	1,000	1,000	2,000
75.364 Weekly Exam	1,000	100	1,100
Totals	32,050	15,340	47,390

Taking the total cost to underground anthracite coal mines of $47,390 and dividing it by the total revenues in 2010 for underground anthracite coal mines of $8,251,300 the economic impact of the final rule to underground anthracite coal mines is 0.57 percent of total revenues ($47,390/$8.25 million).

VI. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible. The existing regulations require mine operators to perform the examinations to identify hazardous conditions. The final rule expands the existing standards to require the mine examiner to identify violations of specific health or safety standards listed in the final rule.

A. Technological Feasibility

MSHA concludes that the final rule is technologically feasible because it simply requires operators to identify, record, and correct violations of health or safety standards. There are no technology issues raised by the final rule.

B. Economic Feasibility

MSHA concludes that the final rule is economically feasible. The U.S. underground coal mining sector produced an estimated 337 million short tons of coal in 2010. Multiplying the production by the 2010 price of underground coal of $60.73 per short ton yields estimated 2010 underground coal revenues of approximately $20.5 billion. MSHA estimated the yearly compliance cost of the final rule to be $17.0 million, which is 0.08 percent of revenues ($17.0 million/$20.5 billion) for underground coal mines. MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community.

VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small businesses. Based on its analysis, MSHA notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the final rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and must use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this final rule on underground coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with the final rule and the impact of the final rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

B. Factual Basis for Certification

MSHA initially evaluates the impact on ''small entities'' by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs do not exceed 1 percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis is required.

For underground coal mines, the estimated preliminary 2010 production was approximately 3.7 million tons for mines that had fewer than 20 employees and 251 million tons for mines that had 500 or fewer employees. Using the 2010 price of underground coal of $60.73 per short ton and total 2010 coal production in short tons, underground coal revenues are estimated to be approximately $224 million for mines employing fewer than 20 employees and $15.0 billion for mines employing 500 or fewer employees. The annual costs of the final rule for mines that have fewer than 20 employees is 0.86 percent ($1.9 million/$224 million) of annual revenues, and the annual costs of the final rule for mines that have 500 or fewer employees is 0.10 percent ($16.1 million/$15.2 billion) of annual revenues.

Using either MSHA's traditional definition of a small mine (one having fewer than 20 employees) or SBA's definition of a small mine (one having 500 or fewer employees), the yearly costs for underground coal mines to comply with the final rule will not exceed 1 percent of their estimated revenues. Accordingly, MSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act of 1995

A. Summary

This final rule contains changes that affect the burden in an existing paperwork package with OMB Control Number 1219–0088. The final rule also contains a new burden for information collection requirements, which is shown in Table 6. MSHA estimates that the final rule will result in approximately 15,478 burden hours with an associated cost of approximately $1.2 million annually. The change in the number of mines increased the burden hours and cost. However, the net effect per mine is a decrease from the proposed rule.

TABLE 6—SUMMARY OF BURDEN HOURS AND COSTS

Requirement	Burden hours	Cost
75.360 Pre-Shift exam	13,278	$1,124,514
75.363 Record of Hazards	827	62,157
75.364 Weekly exam	1,373	50,673
Totals	15,478	1,237,344

Many of the commenters were concerned that under the proposal, recordkeeping requirements would increase dramatically. One stated that the recordkeeping will require additional personnel on each shift, 7 days per week and, thus, add four people at an annual cost of $400,000 per mine with wages and benefits. MSHA estimated additional time for identifying, correcting, and recording violations of nine standards found during preshift, supplemental, on-shift, and weekly mine examinations. Out of the additional time for examining for violations, MSHA estimates that an average of 3 minutes (0.05 hr) will be for recording the violations found and the corrective actions taken. MSHA has determined that requiring examiners to look for violations of nine standards during required examinations and recording the violations found and corrective actions taken, will increase the burden on operators, but will not require additional examiners.

Final § 75.360—Burden to Make a Record of the Preshift Examination

Final § 75.360 requires operators to record hazardous conditions and violations of standards found during the preshift examination and the corrective actions taken. MSHA estimates that it would take an examiner an average of 3 minutes (0.05 hr) out of the total additional time needed to perform the preshift examination to record the violations and any corrective actions taken. An examiner conducting a preshift examination earns a supervisory wage of $84.69 an hour (includes benefits). MSHA estimates that—

- Mines with 1–19 employees operate one shift per day, 200 days per year;
- Mines with 20–500 employees operate two shifts per day, 300 days per year; and
- Mines with 501+ employees operate three shifts per day, 350 days per year.

MSHA's estimates of underground coal operators' annual burden hours and burden hour costs for preshift examinations are presented below.

Burden Hours

- 172 mines × 1 shift × 200 days × 0.05 hr = 1,720 hr
- 366 mines × 2 shifts × 300 days × 0.05 hr = 10,980 hr
- 11 mines × 3 shifts × 350 days × 0.05 hr = 578 hr

Total Hours = 13,278 hr

Burden Hour Costs

- 13,278 hr × $84.69/hr = $1,124,514

There are no other associated costs because the final rule adds to an existing system of recordkeeping.

Final § 75.363—Burden to Make a Record of Violations Found

Final § 75.363 requires operators to record any violations of mandatory health or safety standards found on supplemental and on-shift examinations and any corrective actions taken. The final preshift (§ 75.360) and weekly (§ 75.364) examinations have their own recordkeeping requirements. The final supplemental (§ 75.361) and on-shift (§ 75.362) standards contain new recordkeeping requirements if a violation of a mandatory health or safety standard is found. The recordkeeping for these final standards would be recorded under final § 75.363.

During FY 2005 through 2009, MSHA inspectors found an annual average of 22,062 violations of the 9 top cited standards MSHA believes are most likely to be identified on preshift, supplemental, on-shift, and weekly examinations (see Section IV). Because conditions resulting in these violations can occur and require corrective action multiple times during the year (e.g., insufficient rock dust), MSHA multiplied the 22,062 violations found by MSHA inspectors by a factor of 1.5 to arrive at an estimated 33,093 violations that could be found by mine examiners. MSHA assumes that half of these violations, 16,547 violations, would be identified on the preshift and weekly examinations and the other half would be identified on supplemental and on-shift examinations.

MSHA estimates that 80 percent of these violations (13,237 = 0.80 × 16,547) would be found on the on-shift examinations and 20 percent of these violations (3,309 = 0.80 × 16,547) would be found on the supplemental examinations. MSHA estimates that it would take 3 minutes (0.05 hrs.) to record any violations identified and the corrective actions taken. Supervisors earning $84.69 an hour perform on-shift exams and certified examiners earning $36.92 perform supplemental exams.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

Burden Hours

- 13,239 violations × 0.05 hrs. = 662 hrs.
- 3,310 violations × 0.05 hrs. = 165 hrs.

Total Hours = 827 hrs.

Burden Costs

- 662 hrs. × $84.69 wage rate = $56,065
- 165 hrs. × $36.92 wage rate = $6,092

Total burden cost = $62,157

Final § 75.364—Burden to Make a Record of the Weekly Examinations

Final § 75.364 requires operators to conduct examinations every 7 days and record hazardous conditions and violations of standards found and corrective actions taken. MSHA estimates that it will take a certified examiner approximately 3 minutes (0.05 hr) out of the total time needed to conduct the examination to record the violations found and corrective actions taken. An examiner conducting these weekly examinations earns a non-supervisory wage of $36.92 an hour (includes benefits). MSHA also estimates that, on average, mines operate for 50 weeks per year.

MSHA's estimates of underground coal operators' annual burden hours and related costs for weekly examinations are presented below.

Burden Hours

- 549 mines × 50 weeks × 0.05 hr = 1,373 hr

Burden Hour Costs

- 1,373 hr × $36.92/hr = $50,673

There are no other associated costs because the final rule adds to an existing system of recordkeeping.

B. Procedural Details

The information collection package for this final rule was submitted to OMB for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. MSHA requested comment on its estimates for information collection requirements in the proposal and responded to these comments in the final rule. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

The Department will, concurrent with publication of this rule, submit the information collections contained in this final rule for review under the PRA to the OMB, as part of a revision to Control Number 1219–0088. The Department will publish an additional Notice to announce OMB's action on the request and when the information collection requirements will take effect. The regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays the OMB control numbers for the information collection requirements in its regulations in 30 CFR part 3.

IX. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Executive Order 13132: Federalism

This final rule does not have ''federalism implications'' because it will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Accordingly, under E.O. 13132, no further Agency action or analysis is required.

One commenter stated that they disagreed with MSHA's finding regarding E.O. 13132, that the proposed rule would not have 'federalism implications' or a 'substantial direct effect' on states. The commenter said that the rule would have real implications for states, with potentially substantial costs associated with training and certification. Historically, MSHA accepted state certifications for mine examiners. The final rule addresses hazardous conditions required under the existing rule and violations of health or safety standards. Since violations of the nine standards generally relate to hazardous conditions covered by the existing rule, MSHA believes that the final rule will have only a minimal effect on states. It is currently the responsibility of the mine operator to correct any violation of a health or safety standard. Based on Agency experience, MSHA does not anticipate that requiring examiners on preshift, supplemental, on-shift, and weekly examinations to look for and identify violations of the nine standards in the final rule will affect training and certification done by the states.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This final rule impacts only the underground coal mine industry. Accordingly, MSHA certifies that this final rule would not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have ''tribal implications'' because it will not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed this final rule for its energy effects because the final rule applies to the underground coal mining sector. Because this final rule will result in yearly costs of approximately $17.0 million to the underground coal mining industry, relative to annual revenues of $18.8 billion in 2010, MSHA has concluded that it is not a significant energy action because it is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

X. References

Hintermann, B., Alberini, A., and Markandya, A. (2010). ''Estimating the Value of Safety with Labor Market Data: Are the Results Trustworthy?'' *Applied Economics,* pages 1085–1100. Published electronically in July 2008.

Sunstein, C. (2004). ''Valuing Life: A Plea for Disaggregation.'' *Duke Law Journal, 54* (November 2004): 385–445.

U.S. Bureau of Economic Analysis (2010). ''National Income and Product Accounts Table: Table 1.1.9. Implicit Price Deflators for Gross Domestic Product'' [Index numbers, 2005 = 100]. Revised May 27, 2010. *http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&Freq=Qtr&FirstYear=2006&LastYear=2008.*

U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (2010), ''Best Practices for Dust Control in Coal Mining'', DHHS (NIOSH) Publication No. 2010–110, Information Circular 9517, Jan 2010:1–76.

Viscusi, W. & Aldy, J. (2003) ''The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World'', *Journal of Risk and Uncertainty,* (27:5–76).

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation.

Dated: April 3, 2012.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended, chapter I of title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 subpart D is added to read as follows:

Authority: 30 U.S.C. 811, 863.

Subpart D—Ventilation

■ 2. Section 75.360 is amended by revising paragraphs (a)(2), (b) introductory text, (e), and (g), and adding new paragraph (b)(11) to read as follows:

§ 75.360 Preshift examination at fixed intervals.

(a) * * *

(2) Preshift examinations of areas where pumpers are scheduled to work or travel shall not be required prior to the pumper entering the areas if the pumper is a certified person and the pumper conducts an examination for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (b)(11) of this section, tests for methane and oxygen deficiency, and determines if the air is moving in its proper direction in the area where the pumper works or travels. The examination of the area must be completed before the pumper performs any other work. A record of all hazardous conditions and violations of the mandatory health or safety standards found by the pumper shall be made and retained in accordance with § 75.363 of this part.

(b) The person conducting the preshift examination shall examine for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (b)(11) of this section, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at the following locations:

* * * * *

(11) Preshift examinations shall include examinations to identify violations of the standards listed below:

(i) §§ 75.202(a) and 75.220(a)(1)—roof control;

(ii) §§ 75.333(h) and 75.370(a)(1)—ventilation, methane;

(iii) §§ 75.400 and 75.403—accumulations of combustible materials and application of rock dust;

(iv) § 75.1403—other safeguards, limited to maintenance of travelways along belt conveyors, off track haulage roadways, and track haulage, track switches, and other components for haulage;

(v) § 75.1722(a)—guarding moving machine parts; and

(vi) § 75.1731(a)—maintenance of belt conveyor components.

* * * * *

(e) The district manager may require the operator to examine other areas of the mine or examine for other hazards and violations of other mandatory health or safety standards found during the preshift examination.

* * * * *

(g) *Recordkeeping.* A record of the results of each preshift examination, including a record of hazardous conditions and violations of the nine mandatory health or safety standards and their locations found by the examiner during each examination, and of the results and locations of air and methane measurements, shall be made on the surface before any persons, other than certified persons conducting examinations required by this subpart, enter any underground area of the mine. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the certified person who made the examination or by a person designated by the operator. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. A record shall also be made by a certified person of the action taken to correct hazardous conditions and violations of mandatory health or safety standards found during the preshift examination. All preshift and corrective action records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

* * * * *

■ 3. Section 75.361 is amended by revising paragraph (a) to read as follows:

§ 75.361 Supplemental examination.

(a)(1) Except for certified persons conducting examinations required by this subpart, within 3 hours before anyone enters an area in which a preshift examination has not been made for that shift, a certified person shall examine the area for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (a)(2) of this section, determine whether the air is traveling in its proper direction and at

its normal volume, and test for methane and oxygen deficiency.

(2) Supplemental examinations shall include examinations to identify violations of the standards listed below:

(i) §§ 75.202(a) and 75.220(a)(1)—roof control;

(ii) §§ 75.333(h) and 75.370(a)(1)—ventilation, methane;

(iii) §§ 75.400 and 75.403—accumulations of combustible materials and application of rock dust;

(iv) § 75.1403—other safeguards, limited to maintenance of travelways along belt conveyors, off track haulage roadways, and track haulage, track switches, and other components for haulage;

(v) § 75.1722(a)—guarding moving machine parts; and

(vi) § 75.1731(a)—maintenance of belt conveyor components.

* * * * *

■ 4. Section 75.362 is amended by revising paragraphs (a)(1) and (b), and adding new paragraph (a)(3) to read as follows:

§ 75.362 On-shift examination.

(a)(1) At least once during each shift, or more often if necessary for safety, a certified person designated by the operator shall conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. The certified person shall check for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (a)(3) of this section, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction.

* * * * *

(3) On-shift examinations shall include examinations to identify violations of the standards listed below:

(i) §§ 75.202(a) and 75.220(a)(1)—roof control;

(ii) §§ 75.333(h) and 75.370(a)(1)—ventilation, methane;

(iii) §§ 75.400 and 75.403—accumulations of combustible materials and application of rock dust;

(iv) § 75.1403—other safeguards, limited to maintenance of travelways along belt conveyors, off track haulage roadways, and track haulage, track switches, and other components for haulage;

(v) § 75.1722(a)—guarding moving machine parts; and

(vi) § 75.1731(a)—maintenance of belt conveyor components.

(b) During each shift that coal is produced, a certified person shall examine for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (a)(3) of this section along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, if the examination is conducted within 3 hours before the oncoming shift.

* * * * *

■ 5. Section 75.363 is amended by adding new paragraph (e) and revising the section heading and paragraphs (a) and (b) to read as follows:

§ 75.363 Hazardous conditions and violations of mandatory health or safety standards; posting, correcting, and recording.

(a) Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the hazardous condition may enter the posted area. Any violation of a mandatory health or safety standard found during a preshift, supplemental, on-shift, or weekly examination shall be corrected.

(b) A record shall be made of any hazardous condition and any violation of the nine mandatory health or safety standards found by the mine examiner. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition or violation of the nine mandatory health or safety standards is found and shall include the nature and location of the hazardous condition or violation and the corrective action taken. This record shall not be required for shifts when no hazardous conditions or violations of the nine mandatory health or safety standards are found.

* * * * *

(e) *Review of citations and orders.* The mine operator shall review with mine examiners on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required.

■ 6. Section 75.364 is amended by revising the introductory text of paragraph (b) and paragraphs (d) and (h), and adding new paragraph (b)(8) to read as follows:

§ 75.364 Weekly examination.

* * * * *

(b) *Hazardous conditions and violations of mandatory health or safety standards.* At least every 7 days, an examination for hazardous conditions and violations of the mandatory health or safety standards referenced in paragraph (b)(8) of this section shall be made by a certified person designated by the operator at the following locations:

* * * * *

(8) Weekly examinations shall include examinations to identify violations of the standards listed below:

(i) §§ 75.202(a) and 75.220(a)(1)—roof control;

(ii) §§ 75.333(h) and 75.370(a)(1)—ventilation, methane;

(iii) §§ 75.400 and 75.403—accumulations of combustible materials and application of rock dust; and

(iv) § 75.1403—maintenance of off track haulage roadways, and track haulage, track switches, and other components for haulage;

(v) § 75.1722(a)—guarding moving machine parts; and

(vi) § 75.1731(a)—maintenance of belt conveyor components.

* * * * *

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Any violation of the nine mandatory health or safety standards found during a weekly examination shall be corrected.

* * * * *

(h) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is conducted, a record of the results of each weekly examination, including a record of hazardous conditions and violations of the nine mandatory health or safety standards found during each examination and their locations, the corrective action taken, and the results and location of air and methane measurements, shall be made. The results of methane tests shall be recorded as the percentage of methane

measured by the examiner. The record shall be made by the person making the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

* * * * *

[FR Doc. 2012–8328 Filed 4–4–12; 11:15 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2012–0165]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the Quad Cities Live Uncommon Walk to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for two hours.

DATES: This deviation is effective from 8:30 p.m. to 10:30 p.m. on June 2, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0165 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0165 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a two-hour period from 8:30 p.m. to 10:30 p.m., June 2, 2012, while a walk is held between the cities of Davenport, IA and Rock Island, IL. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 12, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–8293 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0943]

RIN 1625–AA09

Drawbridge Operation Regulation; Blackwater River, South Quay, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the S189 Bridge over Blackwater River, mile 9.2, at South Quay, VA. The new rule will change the current regulation requiring a 24-hour advance notice and allow the bridge to remain in the closed position for the passage of vessels. There have been no requests for openings in 11 years.

DATES: This rule is effective May 7, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0943 and are available by going to *http://www.regulations.gov,* inserting USCG–2011–0943 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Jim Rousseau, Bridge Management Specialist, Coast Guard; telephone 757–398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 8, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Blackwater River, South Quay, VA in the **Federal Register** (76 FR 76634). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

Virginia Department of Transportation has requested a change in the operation regulation of the S189 Bridge across Blackwater River, mile 9.2, at South Quay VA. There has been no request for openings since the year 2000. The only industrial waterway user to request openings left the area in 2000. Since 2008 up to the present day, the average daily vehicular count is approximately 2,930. The Coast Guard will allow the above mentioned bridge to remain in the closed to navigation position in accordance with 33 CFR 117.39.

The vertical clearance of the Swing Bridge is 14 feet above mean high tide in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.999. The current 24 hour advance notice is no longer necessary because of the lack of openings.

Discussion of Comments and Changes

The Coast Guard will revise 33 CFR 117.999 for the S189 Bridge over Blackwater River, mile 9.2, at South Quay, VA. The current regulation states: The draw of the S189 bridge, mile 9.2 at South Quay, shall open on signal if at least 24 hours notice is given. The new regulation would allow the bridge to not open for the passage of vessels. The change of the operating regulation will reflect the current use of the waterway. Pursuant to the NPRM, there was a comment period of 60 days and no comments were received.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. The change is expected to have minimal impact on mariners, because there have been no requests for openings for the past 11 years, and there is no anticipated change to vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities for the following reasons: There have been no vessel requests for openings for the past 11 years. Vessels that can safely transit under the bridge may do so at any time. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM, we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.999 to read as follows:

§ 117.999 Blackwater River.

The draw of the S189 bridge, mile 9.2 at South Quay, need not be opened for the passage of vessels.

Dated: March 1, 2012.

William D. Lee,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–8295 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0217]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Willamette River, mile 11.7, at Portland, OR. This deviation is necessary to accommodate the Bridge to Brews foot race scheduled for April 15, 2012. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 8 a.m. on April 15, 2012 through 11:15 a.m. April 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0217 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0217 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested that the Broadway Bascule Bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Bridge to Brews event. The Bridge to Brews event is an annual 8–10K footrace held in Portland, OR. The race course passes over the Broadway Bridge. The Broadway Bridge crosses the Willamette River at mile 11.7 and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday and also requires advance notification when a bridge opening is needed. This deviation period is from 8 a.m. on April 15, 2012 through 11:15 a.m. April 15, 2012. The deviation allows the bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to remain in the closed position and need not open for maritime traffic from 8 a.m. through 11:15 a.m. on April 15, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 19, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–8296 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0230]

Drawbridge Operation Regulation; Sacramento River, Isleton, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Isleton Drawbridge across Sacramento River, mile 18.7, at Isleton, CA. The deviation is necessary to allow California Department of Transportation to paint and perform routine maintenance on the drawbridge. This deviation allows

single leaf operation of the double leaf bascule style drawbridge during the project.

DATES: This deviation is effective from 7 a.m., April 20, 2012, to 6 p.m. on June 18, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2012–0230 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0230 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Isleton Drawbridge, mile 18.7, over Sacramento River, at Isleton, CA. The drawbridge navigation span provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

Either leaf of the double bascule drawspan may be secured in the closed-to-navigation position from 7 a.m., April 20, 2012 to 6 p.m. on June 18, 2012, to allow Caltrans to conduct painting and maintenance on the bridge. The opposite leaf will continue to operate normally, providing unlimited vertical clearance and 83 feet horizontal clearance between leafs. A work platform will be installed below the secured leaf, reducing vertical clearance by 6 feet. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary deviation were raised.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 23, 2102.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–8294 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0037]

RIN 1625–AA00

Safety Zone; Matlacha Bridge Construction, Matlacha Pass, Matlacha, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Matlacha Pass in the vicinity of the Matlacha Bridge in Matlacha, Florida. The safety zone will be enforced during construction of the Matlacha Bridge from Monday, March 12, 2012 through Tuesday, April 10, 2012. The safety zone is necessary to protect life and property on navigable waters of the United States during the Matlacha Bridge construction. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective from 7 a.m. on March 12, 2012 through 7 p.m. on April 10, 2012. This rule will be enforced daily from 7 a.m. until 7 p.m. on March 12, 2012 through April 10, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0037 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0037 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of this stage of the Matlacha Bridge construction until February 6, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to construction operations to install the new bascule leaf on the Matlacha Bridge. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the bridge construction.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect life and property on navigable waters of the United States during the Matlacha Bridge construction.

Discussion of Rule

From Monday, March 12, 2012 through Tuesday, April 10, 2012, Archer Western Contractors, Ltd., Inc. will be installing a new bascule leaf on the Matlacha Bridge in Matlacha, Florida. The bascule leaf installation will require a barge to be placed between the fender system at the Matlacha Bridge, thereby closing the Matlacha Pass channel to marine traffic. The construction poses a danger to mariners located in or transiting the area.

The safety zone encompasses certain waters of Matlacha Pass in the vicinity of the Matlacha Bridge in Matlacha, Florida. The safety zone will be in effect during the installation of the bascule leaf, which is scheduled to take place between March 12, 2012 and April 10, 2012. At this time the Coast Guard does not know the exact hours of construction. However, prior to each enforcement period, the Coast Guard will provide notice by publication in the local notice to mariners and via broadcast notice to mariners. On-scene notice will also be provided by the Coast Guard or local law enforcement.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for 12 hours per day for a total of 29 days; (2) vessel traffic in the area is expected to be minimal during the enforcement periods; (3) the barge placed in the main channel will be able to move with 12 hours advance notice; (4) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement periods; (5) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement periods if authorized by the Captain of the Port St. Petersburg or a designated representative; and (6) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Matlacha Pass encompassed within the safety zone between 7 a.m. and 7 p.m. from March 12, 2012 through April 10, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced 12 hours per day for a total of 29 days. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0037 to read as follows:

§ 165.T07–0037 Safety Zone; Matlacha Bridge Construction, Matlacha Pass, Matlacha, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of Matlacha Pass within a 100 yard radius of position 26°37′57.6″ N, 82°04′04.8″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The regulated area will only be enforced during the installation of the new bascule leaf requiring the placement of a barge within the main channel.

(4) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* This rule is effective from 7 a.m. on March 12, 2012 through 7 p.m. on April 10, 2012. This rule will be enforced daily from 7 a.m. until 7 p.m. on March 12, 2012 through April 10, 2012, during installation of the bascule leaf on the Matlacha Bridge.

Dated: March 9, 2012.

S.L. Dickinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2012–8311 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0604; FRL–9342–5]

2-Ethyl-1-hexanol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an exemption from the requirement of a tolerance for residues of 2-ethyl-1-hexanol (CAS no. 104–76–7) to increase the maximum use level for residues from 2.5% to 10% in final pesticide formulations, when used as an inert ingredient as a cosolvent, defoamer, solvent in pesticide formulations, inert ingredients used pre- and post-harvest, and inert ingredients applied to animals. Cognis submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to the existing exemption for 2-ethyl-1-hexanol.

DATES: This regulation is effective April 6, 2012. Objections and requests for hearings must be received on or before June 5, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0604. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; email address: *whitehurst.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0604 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 5, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0604, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of September 7, 2011 (76 FR 55329) (FRL–8886–7), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1E7893) by Cognis Corporation, c/o Lewis & Harrison LLC, 122 C St. NW., Suite 740, Washington, DC 20001. The petition requested that 40 CFR 180.910 and 180.930 be amended by modifying an exemption from the requirement of a tolerance for residues of 2-ethyl-1-hexanol (CAS Reg. No. 104–76–7) to increase the maximum use level from 2.5% to 20% in final pesticide formulations when used as an inert ingredient as a cosolvent, defoamer, solvent in pesticide formulations applied to agricultural growing crops or to raw agricultural commodities after harvest and direct application to animals. That notice referenced a summary of the petition prepared by Cognis Corporation, c/o Lewis & Harrison LLC, the petitioner, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has increased the maximum use limit for 2-ethyl-1-hexanol under 40 CFR 180.910 and 180.930 to 10% and not 20% as requested by the petitioner due to aggregate risk concern. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in the document ''Decision Document for Petition Number 1E7893:2-Ethylhexanol; Human Health Risk Asseessment and Ecological

Effects Assessment for Proposed Exemption from Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,'' in docket ID number EPA–HQ–OPP–2011–0604.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 2-ethyl-1-hexanol including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 2-ethyl-1-hexanol follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by 2-ethyl-1-hexanol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit. The available toxicity studies for 2-ethyl-1-hexanol are summarized in detail in the Decision Document for Petition Number 1E7893: ''2-Ethylhexanol; Human Health Risk Assessment and Ecological Effects Assessment for Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations.''

The Agency has determined that 2-ethyl-1-hexanol is of low acute toxicity by the oral and dermal routes. Studies in rats and mice have LD_{50}s ranging from 2,000 to 6,400 milligrams/kilogram (mg/kg) of body weight. 2-Ethyl-1-hexanol is moderately irritating to the skin and severely irritating to the eye. Eleven subacute and subchronic studies have been performed with 2-ethyl-1-hexanol.

All the studies show that repeated exposure to 2-ethyl-1-hexanol has low potential for toxicity. The major target organ for 2-ethyl-1-hexanol is the liver with peroxisome proliferation as the major hepatic endpoint. The lowest NOAEL was observed in rats at 100 mg/kg/day based on liver weights and liver peroxisomes at the LOAEL of 320 mg/kg/day. No neurotoxic effects, even at high doses, were observed in the subchronic or chronic studies, so there is no reason to assume 2-ethyl-1-hexanol has neurotoxic potential.

Numerous genotoxicity studies have been conducted with 2-ethyl-1-hexanol, including five Ames tests, an *in vitro* cell transformation assay, an 8-azaguanine resistance assay, a mouse micronucleus test, a mouse lymphoma assay, a Rec-assay, a CHO mutation assay, an unscheduled DNA synthesis assay, an *in vivo* dominant lethal assay and an *in vivo* chromosomal aberration assay. The results of all *in vitro* assays except the 8-azaguinine resistance assay were negative and all *in vivo* studies were negative as well. The genotoxicity data clearly indicate that 2-ethyl-1-hexanol is not mutagenic.

Carcinogenicity studies in both rats and mice were conducted. In the mouse study, male and female mice were gavaged with 2-ethyl-1-hexanol at doses of 0, 50, 200 or 750 mg/kg/day for 18 months. No substance-related changes were seen at 50 or 200 mg/kg/day. At 750 mg/kg/day, reduced body weight gain related to decreased food consumption and increased mortality was noted. Treatment-related hematological changes were seen, and slight but not statistically significant increases were noted in focal hyperplasia of the epithelium of the forestomach. No statistically significant increases in tumor incidence were noted in mice. In the rat study, male and female rats were gavaged five days/week for 24 months at 0, 50, 150 or 500 mg/kg/day. Dose-related reduced body weight gain was noted at 150 mg/kg/day and higher. Clinical findings included poor general condition, labored breathing, and piloerection. Increased mortality occurred in females at 500 mg/kg/day. No increase in tumor incidence was noted. Based on the results of the rat and mice studies and lack of mutagenicity concerns, it can be reasonably concluded that 2-ethyl-1-hexanol is not likely to be carcinogenic.

Developmental toxicity studies have been performed with 2-ethyl-1-hexanol; and a reproductive study has been performed using diethylhexyl adipate (DEHA) that readily metabolizes to 2-ethyl-1-hexanol in mammals. EPA concluded that none of the studies

showed any developmental or reproductive toxicity associated with 2-ethyl-1-hexanol, even at high dose levels.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

Several subchronic, chronic/ carcinogenicity studies are available for 2-ethyl-1-hexanol. No endpoint of concern for acute exposure was identified in the available database. The NOAEL, from the carcinogenicity study in rat was 50 mg/kg/day based on dose-related reduced body weights at the LOAEL of 450 mg/kg/day. The chronic RfD is 0.5 mg/kg/day using a hundredfold uncertainty factor (10X intraspecies and 10X interspecies variation). The population adjusted dose is equal to chronic RfD (0.5 mg/kg/day) since the FQPA factor is reduced from 10X to 1X. This endpoint of concern was used for all exposure durations in order to be conservative in the risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to 2-ethyl-1-hexanol EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from 2-ethyl-1-hexanol in food as follows: The I-Dietary Exposure Evaluation Model (DEEM) is a highly conservative model with the assumption that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity.

Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops (every food eaten by a person each day has tolerance-level residues).

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for 2-ethyl-1-hexanol, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

There are no current residential uses known to the Agency and thus no residential exposures are expected. Therefore, a residential exposure assessment was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found 2-ethyl-1-hexanol to share a common mechanism of toxicity with any other substances, and 2-ethyl-1-hexanol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-ethyl-1-hexanol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There are several developmental toxicity studies available in mice and rats by the gavage route. One developmental toxicity study in rats via inhalation and a dermal developmental toxicity study in mice are also available. In one developmental toxicity study in mice via oral route, no developmental toxicity was observed at the highest dose of 1,525 mg/kg/day. In a separate developmental toxicity study in mice via oral route, no developmental effects were observed at doses up to 135 mg/kg/day (the highest dose tested, HDT). In a rat developmental toxicity study via oral routes, the NOAEL for developmental and maternal toxicity was 800 mg/kg/day based on hydronephrosis and tail abnormalities seen at the LOAEL of 1,600 mg/kg/day above the limit dose of 1,000 mg/kg/day. No developmental toxicity was seen in rats (inhalation) and mice (dermal) at doses up to 850 mg/m^3 and 2,520 mg/kg/day, respectively. The available data on developmental toxicity studies with 2-ethyl-1-hexanol clearly indicate no evidence of increased susceptibility for infants and children. No two generation reproduction study is available in the database for 2-ethyl-1-hexanol, however, no effects on sperm and other reproductive parameters were observed in rats at doses up to 1,080 mg/kg/day when fed on diets containing diethylhexyl adipate (DEHA). In mammals, DEHA is readily metabolized to 2-ethyl-1-hexanol. None of the studies showed any developmental or reproductive toxicity associated with 2-

ethyl-1-hexanol, even at high dose levels.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for 2-ethyl-1-hexanol includes several subchronic, chronic/carcinogenicity studies, mutagenicity studies, metabolism studies, and developmental studies. No two generation reproduction study is available in the database for 2-ethylhexanol, however, no effects on sperm and other reproductive parameters were observed in rats at doses up to 1,080 mg/kg/day when fed on diets containing diethylhexyl adipate (DEHA). In mammals, DEHA is readily metabolized to 2-ethylhexanol.

ii. There is no indication that 2-ethyl-1-hexanol is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity. No neurotoxicity studies are available in the database, however, no clinical signs of neurotoxicity were observed in the available subchronic and chronic studies. Therefore, the developmental neurotoxicity study is not necessary at this time.

iii. No immunotoxicity study is available, however, there were no effects on the thymus or spleen indicated in the available database. Therefore, an immunotoxicity study is not required.

iv. There is no evidence that 2-ethyl-1-hexanol results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in the 2-generation reproduction study with a surrogate chemical.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to 2-ethyl-1-hexanol in drinking water. These assessments will not underestimate the exposure and risks posed by 2-ethyl-1-hexanol.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, 2-ethyl-1-hexanol is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to 2-ethyl-1-hexanol from food and water will utilize 7.7% of the cPAD for U.S. population and 25% for children age 1 to 2 years, the population group receiving the greatest exposure. There are no residential uses for 2-ethyl-1-hexanol. Based on the explanation in this unit, regarding residential use patterns, chronic residential exposure to residues of 2-ethyl-1-hexanol is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, 2-ethyl-1-hexanol is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for 2-ethyl-1-hexanol.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, 2-ethyl-1-hexanol is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for 2-ethyl-1-hexanol.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies and lack of mutagenicity concerns, 2-ethyl-1-hexanol is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to 2-ethyl-1-hexanol residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of 2-ethyl-1-hexanol in or on any food commodities. EPA is establishing a limitation on the amount of 2-ethyl-1-hexanol that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. EPA will not register any pesticide for sale or distribution that contains greater than 10% of 2-ethyl-1-hexanol in food use pesticide formulations.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health

Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 2-ethyl-1-hexanol.

VI. Conclusions

Therefore, the exemptions from the requirement of a tolerance for 2-ethyl-1-hexanol (CAS Reg. No. 104–76–7) at 40 CFR 180.910 and 180.930 are amended to increase the maximum use level from 2.5% to 10% in final pesticide formulations.

VII. Statutory and Executive Order Reviews

This final rule amends an exemption from the requirement for a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''*Regulatory Planning and Review''* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *''Protection of Children from Environmental Health Risks and Safety Risks''* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''*Federalism*'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''*Consultation and Coordination with Indian Tribal Governmentsx*'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 revise the entry for 2-Ethyl-1-hexanol to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
2–Ethyl-1-hexanol (CAS Reg. No. 104–76–7)	Not more than 10% of pesticide	Solvent, adjuvant of surfactants.
* *	* * *	* *

■ 3. In § 180.930 revise the entry for 2-Ethyl-1-hexanol to read as follows:

§ 180.930 Inert Ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
2-Ethyl-1-hexanol (CAS Reg. No. 104–76–7) ..	Not more than 10% of pesticide	Solvent adjuvant of surfactants.
* *	* * *	* *

[FR Doc. 2012–8195 Filed 4–5–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

Correction

In rule document 2011–33772 appearing on pages 423–425 in the issue of Thursday, January 5, 2012 make the following correction:

§ 65.4 [Corrected]

On page 425, in the table, in the column ''Chief executive officer of community'', on the 10th line, ''Mr. Robert Hyatt Davidson, County Manager'' should read ''Mr. Robert Hyatt, Davidson County Manager''.

[FR Doc. C1–2011–33772 Filed 4–5–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1219]

Changes in Flood Elevation Determinations

Correction

In rule document 2011–25157 appearing on pages 60748–60751 in the issue of Friday, September 30, 2011, make the following corrections:

§ 65.4 [Corrected]

1. In the table appearing on page 60750, in the column titled ''Chief executive officer of the community'', the eighth entry from the bottom of the page, ''199 Town Center, Parkway Spring Hill, TN 37174'' should read ''199 Town Center Parkway, Spring Hill, TN 37174''.

2. In the table appearing on page 60750, the last entry in the column titled ''Chief executive officer of the community'', ''301 West 2nd Street, 2nd Floor Austin, Texas 78701'' should read ''301 West 2nd Street, 2nd Floor, Austin, Texas 78701''.

[FR Doc. C1–2011–25157 Filed 4–5–12; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG–2011–0363]

RIN 1625–AB71

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its direct final rule published on December 14, 2011. The direct final rule notified the public of the Coast Guard's intent to revise regulations for the inspection and certification of seagoing barges to align with the language of the applicable statutes. We are withdrawing that rule because we received two adverse comments. That rule will not become effective as scheduled. Instead, we plan to consider these issues in a notice of proposed rulemaking.

DATES: The direct final rule published December 14, 2011, (76 FR 77712), is withdrawn on April 6, 2012.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2011–0363 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Ken Smith, U.S. Coast Guard, telephone 202–372–1413, email *Ken.A.Smith@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2011, we published a direct final rule entitled ''Seagoing Barges'' in the **Federal Register** (76 FR 77712). That rule would have redefined ''seagoing barge'' in 46 CFR parts 90 and 91 and would have revised 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 to exempt specified seagoing barges from inspection and certification to align Coast Guard regulations with the language of the applicable statutes.

In 1983, section 2101(32), Public Law 98–89, 97 Stat. 500 (46 U.S.C. 2101) redefined ''seagoing barge'' as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Coast Guard regulations at 46 CFR 91.01–10(c) do not reflect the language change and instead refer to seagoing barges as vessels ''on the high seas or ocean.'' The withdrawn rule would have changed the language in 46 CFR 91.01–10 from ''on the high seas or ocean'' to ''beyond the Boundary Line'' to reflect the language of Public Law 98–89.

In 1993, Congress exempted from inspection seagoing barges that are unmanned and (1) not carrying hazardous material as cargo, or (2) carrying a flammable or combustible liquid, including oil, in bulk. (*See* Coast Guard Authorization Act of 1993, Pub. L. 103–206, 107 Stat. 2419 (46 U.S.C. 3302(m).) Also in 1993, we stopped requiring the specified seagoing barges to be inspected in compliance with Public Law 103–206. However, we did not amend our regulations to reflect the exemption. That withdrawn rule would have changed the language concerning seagoing barges in 46 CFR 90.05–25, and 46 CFR 91.01–10, and in the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188, to reflect the exemption created by Public Law 103–206.

We published the withdrawn rule as a direct final rule under 33 CFR 1.05–55 because we considered the rule to be noncontroversial and therefore did not expect any adverse comments. In the direct final rule, we notified the public of our intent to make the rule effective on April 12, 2012, unless an adverse comment or notice of intent to submit an adverse comment was received on or before February 13, 2012.

We received two submissions from the same commenter during the comment period, and we determined that both are adverse comments, as explained below. As such, we are withdrawing the direct final rule. We plan to consider the issues raised in the adverse comments in a notice of proposed rulemaking.

Withdrawal

We received two comments in response to the direct final rule. In the first comment, the commenter stated that without a definition of the term ''oil in bulk,'' the rule would be ineffective. In the second comment, the commenter stated that without a definition of the term ''manned,'' the rule would be ineffective. In the direct final rule, we explained that a comment is considered adverse if the commenter explains why this rule or part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change. We have determined that both comments received are adverse comments.

In the first comment, the commenter expressed concern that, without a definition of ''in bulk,'' the rule does not make it clear whether a barge that carries flammable or combustible liquids, including oil, in bulk for use by the vessel and not as cargo, is exempt from inspection and certification. Furthermore, the commenter asked at what quantity of such flammable or combustible liquid carried in bulk is the barge no longer considered exempt under the rule. The commenter also expressed concern that without a definition of ''in bulk,'' barges that carry flammable or combustible liquid, including oil, in bulk as cargo would be subject to inspection regardless of how small the quantity.

In the second comment, the commenter requested a definition for the term ''manned,'' and stated that without such a definition, the rule would be ineffective. The commenter was concerned that there are times when barges that do not require manning to operate have personnel on board to prepare the barges for transfer and off-load, and that without a definition in the rule, it is not clear whether barges with personnel permissively on board require inspection or are exempt.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525, 33 CFR 1.05–55, and Department of Homeland Security Delegation No. 0170.1.

Because we consider these comments to be adverse, we are withdrawing the direct final rule. We plan to seek comment on these concerns in a forthcoming notice of proposed rulemaking.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–8310 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111011616–2102–02]

RIN 0648–BB51

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 23

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action approves Framework Adjustment 23 to the Atlantic Sea Scallop Fishery Management Plan (Framework 23) and implements its measures. Framework 23 was developed and adopted by the New England Fishery Management Council and includes measures to: Minimize impacts on sea turtles through the requirement of a turtle deflector dredge; improve the effectiveness of the scallop fishery's accountability measures related to the yellowtail flounder annual catch limits; adjust the limited access general category Northern Gulf of Maine management program; and modify the scallop vessel monitoring system trip notification procedures to improve flexibility for the scallop fleet.

DATES: Effective May 7, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 23 that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures and alternatives. Copies of Framework 23, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) adopted Framework 23 on September 27, 2011, initially submitted it to NMFS on October 25, 2011, for review and approval, and submitted a revised final framework document on November 30, 2011. Framework 23 includes measures that require vessels fishing in the Atlantic Sea Scallop fishery to use a turtle deflector dredge (TDD), including where, when, and to which vessels this TDD requirement applies. It also revises the current accountability measures (AMs) related to the yellowtail flounder (YTF) annual catch limits (sub-ACLs) for the Georges Bank (GB) and Southern New England/Mid-Atlantic (SNE/MA) YTF stock areas. These modifications only alter the months when a closure applies and do not change the locations for these seasonal closure AMs. Framework 23 also changes how scallop landings are applied to the Northern Gulf of Maine Management (NGOM) total allowable catch (TAC) when harvested by federally NGOM-permitted vessels. Finally, Framework 23 implements procedural changes to when and where a vessel can declare a scallop trip through vessel monitoring systems (VMS).

The Council reviewed the Framework 23 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act. The proposed rule for Framework 23 published in the **Federal Register** on January 3, 2012 (77 FR 52), with a 15-day public comment period that ended January 18, 2012. Three comments were received on the proposed measures.

The final Framework 23 management measures are described below. Details concerning the Council's development of these measures were presented in the

preamble of the proposed rule and are not repeated here.

Requirement To Use a TDD

This action implements a requirement that all limited access (LA) vessels (regardless of permit category or dredge size), and limited access general category (LAGC) Individual Fishing Quota (IFQ) vessels that fish with a dredge with a width of 10.5 ft (3.2 m) or greater, use a TDD in the Mid-Atlantic (west of 71° W long.) from May through October.

The TDD is designed to reduce injury and mortality of sea turtles that come into contact with scallop dredges on the sea floor by deflecting sea turtles over the dredge frame and dredge bag. The TDD includes five modifications to the standard commercial dredge frame:

(1) The cutting bar must be located in front of the depressor plate.

(2) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar.

(4) Struts must be spaced no more than 12 in (30.5 cm) apart from each other.

(5) The TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 in (30.5 cm) in length.

Each element of this dredge is based on direct field research that has been conducted over several years. The combination of these modifications is designed to reduce the likelihood of a sea turtle passing under the dredge frame when the gear is on the seafloor, which could result in the sea turtle being crushed or injured. Available information indicates that these modifications cumulatively benefit sea turtle conservation, while not compromising the structural integrity of the dredge design and scallop yield. These TDD components can be modified by future actions, if additional modifications are developed to further minimize impacts on sea turtles or improve the effectiveness of these measures.

This action requires that all LA vessels, regardless of permit category or dredge width, and all LAGC IFQ vessels that fish with dredge gear greater than or equal to 10.5 feet (3.2 m) in width in the applicable area and season, use a TDD. Because the bump out modification has not yet been fully tested on small dredges, Framework 23 exempts LA scallop vessels that use dredges with a width less than 10.5 ft (3.2 m) from that requirement of the TDD. Thus, LA vessels fishing with dredges less than 10.5 ft (3.2 m) in width only have to use a TDD with the first four modifications listed above. If an LA vessel fishes with two dredges at a time, both of which are less than 10.5 ft (3.2 m) in width, neither dredge is required to have the bump out extension, even though the combined width of both dredges is greater than 10.5 ft (3.2 m). The bump out exemption does not apply to LAGC vessels that use dredges less than 10.5 ft (3.2 m) wide because such vessels are exempted from the requirement to use a TDD entirely, due to concerns of the financial burden that building a new dredge would have on these small day boats, which may have lower IFQ allocations. If an LAGC vessel fishes with two dredges, both of which are less than 10.5 ft (3.2 m) wide, neither dredge is required to comply with the TDD requirements, even though the combined width of both dredges is greater than 10.5 ft (3.2 m).

Due to the time it will take manufacturers to develop TDDs for the scallop fishery, this measure will be effective 1 year after the effective date of Framework 23 (e.g., if Framework 23 is effective on March 15, 2012, the TDD regulations would be effective on March 15, 2013, and TDDs would be required to be used starting May 1, 2013). This delay also provides vessel operators and crew time to fish with the new dredge design before the TDD season begins, should they choose to do so.

This TDD requirement is an important measure to ensure compliance with the second reasonable and prudent measure (RPM#2) and accompanying terms and conditions (T/C) of the 2008 Biological Opinion (2008 Biological Opinion) on the Scallop FMP. RPM#2 states that ''NMFS must continue to investigate and implement, as appropriate, gear modifications for scallop dredge and trawl gear to reduce the capture of sea turtles and/or the severity of the interactions that occur.'' Along with effort restrictions in the Mid-Atlantic, which are required under the first RPM of the 2008 Biological Opinion, and previously implemented regulations requiring the use of chain mate (50 CFR 223.206(d)(11)), TDDs are expected to provide an additional conservation benefit to sea turtles by reducing the severity of any interactions that occur.

Adjustments to the AMs Related to the Scallop Fishery's YTF Sub-ACLs

1. Revised AM Closure Schedules

This action also revises the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures will occur during months with the highest YTF catch rates, rather than being in place for consecutive months beginning at the start of the fishing year (FY). These AM adjustments still only apply to LA vessels. Table 1 compares the current SNE/MA AM schedule with the new Framework 23 schedule. The major difference for SNE/MA is that the Framework 23 closure schedule occurs in the early spring and winter first, rather than starting with the spring and summer, as under the current AM for that stock area. AMs will occur in the same FY, with the winter closures occurring at the end of the FY.

TABLE 1—COMPARISON OF CURRENT SNE/MA AM SCHEDULE AND THE FRAMEWORK 23

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1–2	March	2 or less	Mar–Apr.
3–5	Mar–Apr	2.1–3	Mar–Apr, and Feb.
6–8	Mar–May	3.1–7	Mar–May, and Feb.
9–12	Mar–June	7.1–9	Mar–May, and Jan–Feb.
13–14	Mar–July	9.1–12	Mar–May, and Dec–Feb.
15	Mar–Aug	12.1–15	Mar–June, and Dec–Feb.
16	Mar–Sept	15.1–16	Mar–June, and Nov–Feb.
17	Mar–Oct	16.1–18	Mar–July, and Nov–Feb.
18	Mar–Nov	18.1–19	Mar–Aug, and Oct–Feb.

TABLE 1—COMPARISON OF CURRENT SNE/MA AM SCHEDULE AND THE FRAMEWORK 23—Continued

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
19	Mar–Jan	19.1 or more	Mar–Feb.
20 and higher	Mar–Feb.		

Tables 2 and 3 compare the current GB AM schedules with the new Framework 23 schedules. The GB AM schedule is still complex because the extent of the closure period depends on whether or not Closed Area II Scallop Access Area (CAII) is open in the FY following a GB sub-ACL overage. In general, the major difference is that the current GB AM closures begin in the fall, when GB YTF catch rates are highest, followed by the winter months. The updated GB schedule will begin the closures at a time of year when scallop meat weights are lowest, thus impacts on the scallop resource and fishery should be lower compared to closing the area beginning in March through the spring and summer when scallop meat weights are larger. Similar to the Framework 23 SNE/MA schedule, all closures will occur in the same FY.

TABLE 2—COMPARISON OF CURRENT GB AM SCHEDULE AND THE FRAMEWORK 23 SCHEDULE FOR YEARS WHEN CAII IS OPEN

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1	Mar–May	3 or less	Oct–Nov.
2–24	Mar–June	3.1–14	Sept–Nov.
25–38	Mar–July	14.1–16	Sept–Jan.
39–57	Mar–Aug	16.1–39	Aug–Jan.
58–63	Mar–Sept	39.1–56	Jul–Jan.
64–65	Mar–Oct	Greater than 56	Mar–Feb.
66–68	Mar–Nov.		
69	Mar–Dec.		
70 and higher	Mar–Feb.		

TABLE 3—COMPARISON OF CURRENT GB AM SCHEDULE AND THE FRAMEWORK 23 SCHEDULE FOR YEARS WHEN CAII IS CLOSED

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1	Mar–May	1.9 or less	Sept–Nov.
2	Mar–June	2.0–2.9	Aug–Jan.
3	Mar–July	3.0–3.9	Mar, and Aug–Feb.
4–5	Mar–Aug	4.0–4.9	Mar, and Jul–Feb.
6 and higher	Mar–Feb	5.0–5.9	Mar–May, and Jul–Feb.
		6.0 or greater	Mar–Feb.

2. Re-Evaluating AM Determination Mid-Year

This action modifies the YTF AM regulations by allowing NMFS to re-examine the implementation of an AM once the FY has ended and all data are available. After the end of a given FY, if available end-of-year data results in different projected YTF catch levels than those that determined the initial announcement of any AM triggering (e.g., the extent of the estimated overage was higher or lower than originally estimated, or that an AM should or should not have been triggered), NMFS will adjust the AM determination to reflect the best information available. Currently the only sub-ACLs allocated to the scallop fishery are for SNE/MA YTF and GB YTF, but the Council's intent is for this flexibility to apply to any species' sub-ACL, should they be implemented in the scallop fishery in the future.

On or around January 15 of each year, the Regional Administrator is required to determine if the bycatch sub-ACLs are projected to be exceeded for that FY. If a sub-ACL is exceeded, a closure will be implemented in the following FY based on the overage schedule specified in this final rule. Several months after an FY is complete, a final estimate of YTF catch in the scallop fishery will be completed when all observer and scallop catch data are available. The timing of the final YTF year-end estimate is ultimately based on the availability of the observer data for a given FY. Ideally, observer data in open areas will be available 90 days after the completion of an observed trip. As such, the earliest month that the complete FY observer data would be available is likely June of the following FY. If the final estimate of YTF catch differs from the original estimate, this action gives the Regional Administrator the authority to revise the AM for the YTF sub-ACLs based on the final estimates. Due to the timing of the current AMs, there may not always be an opportunity to adjust AMs if the seasonal closure has already occurred during that FY, but the intent is to be more flexible to incorporate updated information when possible. This action does not give the

Regional Administrator authority to impose AMs outside the scope of approved measures.

In November 2011, the Council adopted Framework Adjustment 47 (Framework 47) to the Northeast (NE) Multispecies FMP. Under Framework 47, the YTF AMs applicable to the scallop fishery would only be triggered if either the entire YTF ACL for a given stock area (SNE/MA or GB) is exceeded, or the scallop fishery exceeds its ACL by 50 percent or more. For example, if the entire YTF ACL for SNE/MA is exceeded in a given FY, and the scallop fishery exceeded its sub-ACL by 1.5 percent, an AM would be triggered for the following scallop FY based on the new Framework 23 schedule (i.e., a portion of SNE/MA would close in March and April). However, if the scallop fishery exceeded its sub-ACL by 1.5 percent but the total ACL for SNE/MA was not exceeded, no AM would be triggered in the scallop fishery for the following FY (i.e., an AM would only be triggered if the scallop FY exceeded its sub-ACL by 150 percent). The proposed rule for Framework 47 (77 FR 18179) published in the **Federal Register** on March 27, 2012, with the public comment period ending on April 11, 2012. NMFS anticipates that Framework 47, if approved, would be effective in May 2012.

Modifications to the NGOM Management Program

To address some concerns regarding the management of the NGOM, this action allows federally permitted NGOM vessels to declare a state waters-only trip within the NGOM and not have those landings applied to the Federal NGOM TAC. If the vessel decides to fish exclusively in state waters within the NGOM area (i.e., MA, NH, and ME state waters), on a trip-by-trip basis, the scallop catch from state water only trips will not be applied against the Federal NGOM TAC. On a trip-by-trip basis, each NGOM vessel can decide which area it is going to fish in (i.e., Federal or state NGOM trip). A NGOM vessel may still fish in both state and Federal waters on a single trip, but that vessel will need to declare a Federal trip before leaving, and the entire catch from that trip will be applied to the Federal TAC, even if some of it was harvested in state waters.

Currently, NGOM and IFQ vessels that declare NGOM trips must have all landings applied to the Federal TAC, regardless of whether or not they were fishing in state or Federal waters of the NGOM. Although this action makes adjustments for NGOM-permitted vessels, the Council did not include a similar provision for IFQ vessels that fish in the NGOM. As a result, IFQ vessels will continue to have all of their landings applied to the NGOM TAC, as well as their IFQ allocations, when fishing in Federal or state waters within the NGOM.

Once the Federal TAC is closed, all federally permitted scallop vessels (i.e., LA, IFQ, and NGOM) are prohibited from fishing in any part of the NGOM until the next FY, unless they permanently relinquish their Federal NGOM permits and fish exclusively in state waters. This action does not change this provision for any scallop vessel, including NGOM vessels. NGOM vessels cannot declare state-only NGOM trips after the effective date of the Federal NGOM closure.

To date, the annual NGOM TAC of 70,000 lb (31.75 mt) has not been fully harvested in any FY, and most NGOM landings come from vessels fishing in state waters. Framework 23 does not change the NGOM hard TAC of 70,000 lb (31.75 mt). The Council will reevaluate the NGOM TAC in the next framework adjustment that will set the specifications for FYs 2013 and 2014.

Although this action applies to all NGOM permitted vessels, the ability for such vessels to fish in state waters within the NGOM (i.e., ME, NH, MA state waters) depends on whether or not such vessels have the necessary state permits to do so. In addition, NGOM permit holders still have to abide by the more restrictive possession limit of either their state or Federal NGOM scallop permit. This action does not exempt vessels from their Federal possession limit when fishing in state waters of the NGOM. To be exempt from Federal scallop possession limits, a state would have to apply for such exemption through the scallop state waters exemption program.

Adjustments to VMS Trip Notifications for Scallop Vessels

This action implements a measure that changes the current VMS trip declaration requirement for scallop vessels only, allowing them to declare a scallop trip anywhere shoreward of the VMS Demarcation Line, rather than from a designated port. Under current regulations, vessels that are involved in VMS fisheries (e.g., vessels with scallop, monkfish, multispecies, surfclam/quahog, and herring permits) must make their VMS trip declarations from inside a port. This action adjusts this process by allowing scallop vessels the authority to declare their scallop trips outside of a designated port, prior to crossing the VMS Demarcation Line and fishing, but does not change the trip declaration requirements for any other fishery. The Council's rationale for this alternative is to improve safety by eliminating the requirement that sometimes results in scallop vessels steaming into unfamiliar ports to declare their scallop trips before being able to fish. The Council may choose to address this issue in other VMS fisheries in future actions for those FMPs, and NMFS recommends that the Council discuss this further for other FMPs in order to be consistent, where possible, when addressing safety issues across all fisheries requiring VMS.

The Council has implemented this action for LA, LAGC IFQ, and LAGC NGOM vessels, although many of these scallop-permitted vessels will likely continue to declare from port, regardless of the option to do otherwise. The only vessels that will likely take advantage of this increased flexibility in trip declarations are the LA vessels declaring scallop DAS trips for fishing grounds that are far from their home port. These trips are what most commonly require a vessel to go into an unfamiliar port to declare into the DAS program because DAS begin to accrue once a vessel crosses to the seaward side of the VMS Demarcation Line and it is not possible, safe, or practicable to remain inside the VMS Demarcation Line throughout the steam to the fishing grounds. Because the current estimate of landings-per-unit-effort (LPUE) is calculated using DAS charged, this action does not change how LPUE is estimated, and increased catch is not expected.

Other Clarifications and Modifications

This action includes several revisions to the regulatory text to address text that is duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. For example, there are terms and cross references in the current regulations that are now inaccurate due to the regulatory adjustments made through Amendment 15 rulemaking (i.e., references to ''TAC'' in some cases should now refer to ''annual catch limits (ACLs)''). NMFS revises the regulations to clarify the terminology intended by Amendment 15 to the FMP (76 FR 43746, July 21, 2011), and to provide more ease in locating these regulations by updating cross references.

This action also clarifies the intent of certain regulations. For example, the VMS regulations are clarified in § 648.10 to more clearly indicate the reporting requirements for various aspects of the scallop fishery (e.g., pre-landing notification requirements and state water exemption trip declaration requirements), to reflect the instructions

currently available through on-board VMS units. Additionally, there are currently prohibitions in § 648.14 that imply that NGOM and incidental scallop vessels may retain more scallops than their allowable possession limit if they are assigned industry-funded observers during scallop trips. This text is unnecessary and confusing, because NGOM and incidental scallop vessels are not part of the scallop industry-funded observer program, and therefore would not be assigned such observers. As such, NMFS removes these references from the regulations. NMFS also clarifies how LAGC vessels are charged fees by observer providers in § 648.14, since such an explanation exists for LA vessels. A restriction on transferring IFQ in § 648.53(h)(5)(iii) is also clarified to allow vessels to complete multiple IFQ transfers during the course of a FY, as long as the transfers are for a portion of the IFQ and do not exceed the total yearly allocation. NMFS received some applications for permanent transfers of 100 percent of a vessel's IFQ in the same FY that IFQ was already leased from the same vessel. While this activity remains prohibited because transfers of allocation percentage is effectively a transfer of pounds, the restriction was not intended to prevent someone from completing multiple transfers of portions of their IFQ. As a result, the regulations are clarified to indicate that such multiple IFQ transfers are possible during a single FY.

NMFS also removes outdated text regarding LAGC quarterly TACs, which ceased to exist after the IFQ program was implemented in FY 2010, and references to the CAII rotational management schedule, which was intended to be removed in the rulemaking for Framework 22, along with the schedules for the other GB access areas. NMFS makes these changes consistent with section 305(d) of the Magnuson-Stevens Act.

NMFS also changes, pursuant to its authority under section 305(d) of the Magnuson-Stevens Act, the coordinates of the Closed Area I (CAI) access area and the CAI North and South essential fish habitat (EFH) areas. These coordinates were initially developed through Framework 16 to the FMP (69 FR 63460, November 2, 2004) and were implemented through Amendment 15 for FY 2011. During the course of FY 2011, vessels fishing in the CAI access area discovered that the new coordinates for the access area created a western boundary that is ¼ of a mile (0.4 km) to the east of the CAI western boundary, described in § 648.81(a)(1) as the line extending between the points CI1 (41°30′ N lat.; 69°23′ W long.) and CI2 (40°45′ N lat.; 68°45′ W long.). However, the access area was designed to cover the whole middle portion of CAI and extend out to the CAI western boundary. In reviewing the coordinates, NMFS found that the western coordinates for the CAI access area were established using imprecise matching of coordinates to the CAI western boundary line. NMFS updates these coordinates in the regulations to extend the western boundary of CAI. To avoid any confusion on intent, in the case that various mapping software used by the industry or NOAA's Office of Law Enforcement provide slightly different results, NMFS also clarifies that the western boundary of the CAI access area is the same as the western boundary of CAI that lies between the two western-most coordinates of the CAI access area. Since these two coordinates also are included in the coordinates of the CAI North and CAI South EFH closed areas, NMFS changes those EFH area coordinates as well.

Finally, although this does not affect the current regulations, NMFS clarifies an error in table 3 of the final rule to Framework 22 (76 FR 43774; July 21, 2011). The scallop sub-ACL values of YTF in GB and SNE/MA were mistakenly reversed in this table and should have stated that the FY 2011 sub-ACLs in GB and SNE/MA are 200.8 mt and 82 mt, respectively, and the FY 2012 sub-ACLs in GB and SNE/MA are 307.5 mt and 127 mt, respectively. The regulations already indicate the correct values for these FYs, so this action makes no regulatory changes due to this error.

Comments and Responses

NMFS received three comment letters in response to the proposed rule from: A representative from Nordic Fisheries, a family-owned company that runs out of New Bedford, MA; the Fisheries Survival Fund (FSF), writing on behalf of full-time limited access scallop fleet members; and Oceana, a non-profit organization focused on ocean-related environmental issues. Six relevant issues relating to the proposed Framework 23 measures were raised; responses are provided below. NMFS may only approve, disapprove, or partially approve measures in Framework 23, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

Comment 1: A representative of Nordic Fisheries generally supports the proposed measures in Framework 23, but commented that the final rule should mention that the TDD requirement meets RPM#2 and associated T/C of the 2008 Biological Opinion as an appropriate gear modification for a scallop dredge to reduce the capture of sea turtles.

Response 1: Based on its Endangered Species Act Section 7 consultation on the proposed Framework 23 measures, NMFS agrees that the TDD measures support the RPM#2 and T/C#2 of the 2008 Biological Opinion and has stated this in the preamble to this final rule.

Comment 2: FSF commented in support of the proposed measures, and expressed their satisfaction with industry, Council, and NMFS coordination on regulatory language describing the TDD requirement. However, FSF continue to note their opinion that the TDD requirement should remove the need for ''area closures and other fishery restrictions implemented as RPMs for the scallop fishery.''

Response 2: The RPMs and implementing T/Cs included in a Biological Opinion are non-discretionary actions that must be implemented. The 2008 Biological Opinion included a number of RPMs to minimize incidental take of sea turtles, including RPMs that are both gear-based and effort-based. NMFS assumes that FSF's comment regarding ''area closures and other fishery restrictions'' refers to the effort-based RPM, RPM#1, which requires that NMFS limit the amount of allocated scallop fishing effort that can be used in the Mid-Atlantic during the time of year when sea turtle distribution overlaps with scallop fishing activity. The gear-based RPM (RPM#2) requires that NMFS continue to investigate and implement, as appropriate, scallop gear modifications to reduce the capture of sea turtles and/or the severity of the interactions that occur. These two RPMs are distinct from one another: The TDD meets the requirements of gear-based RPM#2, but that does not change the fact that RPM#1 must still be implemented. The current RPMs will be revisited when formal Section 7 consultation on the Scallop FMP is reinitiated and a new Biological Opinion is prepared, at which time all changes in the operation of the fishery that have occurred since the previous consultation in 2008 will be examined.

Comment 3: FSF also expressed concern that the yellowtail flounder AMs should not be implemented the subsequent year of an overage, but rather should be implemented in Year 3 (i.e., if the overage occurs in 2011, the accountability measure should be implemented in 2013). FSF noted that if

the estimation of yellowtail flounder bycatch is completed before the end of the fishing year, it is unlikely that all of the data will be accounted for in the mid-year projection. Since the scallop fleet is more active in the beginning of the fishing year, FSF commented that the bycatch rate is not likely to be accurate and will have to be adjusted mid-year, which could potentially lead to adverse consequences to the scallop fleet.

Response 3: NMFS recognizes that the subsequent-year AMs are a concern to the industry, and is generally supportive of the Council considering modifications to the year the YTF AM in the scallop fishery would be implemented. However, as the preamble to the proposed rule for this action states, the measures in Framework 23 regarding YTF AMs do not give the Regional Administrator the authority to impose AMs outside the scope of the Council's approved measures. Neither Amendment 15 nor Framework 23 adopted measures to include Year 3 YTF AMs in the scallop fishery. However, the Council recently included such a measure to be considered in Framework Adjustment 24 (Framework 24) to the Scallop FMP, which is in the early stages of development.

Comment 4: FSF also discussed the need to revisit imposing YTF AMs on the LAGC fleet.

Response 4: NMFS agrees and continues to work with the Council on upcoming actions to address the LAGC fleet with regard to YTF AMs in the scallop fishery. The Council intends to address this issue in Framework 24.

Comment 5: Oceana commented in general support of Framework 23 measures, but specifically recommended changes to the proposed TDD measures. Oceana believes that the TDD should be implemented in the summer of 2012 and that the delay to 2013 is unnecessary and unsupported. Oceana also commented that the TDD should be required for a longer timeframe and should apply to all scallop vessels, but did not offer any argument to why the proposed measures are not sufficient.

Response 5: When implementing gear modifications such as TDD, NMFS must take into account the amount of time it will take for the industry to come into compliance with the new requirement. The scallop industry stated during development of Framework 23 measures that gear manufacturers would not be able to make enough dredges in time for everyone to come into compliance during the 2012 season. It is therefore not reasonable to require the gear until 2013. The Council considered an alternative that would have required all scallop vessels to adhere to the TDD requirement, but ultimately did not adopt that measure due to concerns that requiring TDDs on smaller LAGC vessels may not be economically feasible. Although sea turtle interactions in the Mid-Atlantic scallop fishery may occur in November when TDDs are not required, the adopted timeframe of May through October is still expected to have positive impacts on sea turtles. This time period includes all the months when observed takes have occurred in the scallop dredge fishery (June through October), and also includes May to account for the fact that turtles are expected to be in that area based upon best available data. In addition, although the TDD requirement is for vessels to use this gear for 6 months, it is likely that many vessels will choose to use this gear for longer time periods, perhaps even year-round (i.e., If they fish in the Mid-Atlantic primarily and do not want to bother switching back to the standard commercial dredge after the TDD timeframe). Therefore, the timeframe is reasonably expected to have the intended benefit for sea turtles without unduly restricting scallop vessels, and is consistent with the 2008 Biological Opinion.

Comment 6: Oceana also commented that NMFS should analyze annually the effectiveness of the TDD and promote future research to monitor its impacts on the fishery and sea turtle interactions. In addition, Oceana requested that Framework 23 implement a requirement for the Limited Access bottom trawl fleet to use Turtle Excluder Devices (TED). Independent of Framework 23, NMFS is considering measures to address sea turtle takes in the Mid-Atlantic trawl fisheries.

Response 6: Analyzing the TDDs effectiveness is a requirement of the 2008 Biological Opinion. As such, we intend on continuing to evaluate the effectiveness of gear modifications used in the scallop fishery and other measures designed to protect sea turtles, as needed. Oceana's request to implement a TED requirement for the LA bottom trawl fleet was not proposed by Framework 23 and, therefore, is beyond the scope and purpose of this action.

Changes From Proposed Rule to Final Rule

In § 648.14(i)(2)(ii)(B)(*3*) and § 648.51(b)(5)(ii), the TDD regulations were clarified to indicate that the TDD will not be required until May 1, 2013.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 23 in this final rule. The FRFA consists of and incorporates the IRFA, the relevant analyses and summaries thereof prepared for Framework 23, and the following discussion. This FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Statement of Objective and Need

This action implements four specific management measures applicable to the scallop fishery for FY 2012 and beyond. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 23 and in the preambles of the proposed and final rules, and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

No public comments were received in response to the IRFA summary in the proposed rule or the economic impacts of these measures more generally on small businesses. Summaries of the public comments and NMFS' responses are provided in the ''Comments and Responses'' section of this final rule.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

For the purposes of the RFA, the Small Business Administration (SBA) defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 million annually. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to the dealer's data for

FYs 1994 to 2010. In FY 2010, total average revenue per full-time scallop vessel was just over $1.2 million, and total average scallop revenue per LAGC vessel was just under $120,000. The IRFA for this and prior Scallop FMP actions do not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. Because Framework 23 estimates that no individual vessel grosses more than $3 million in any FY from 1994 through 2010, all permit holders in the sea scallop fishery were considered small business entities for the purpose of this analysis. Therefore, it is not necessary to perform the disproportionality assessment to compare the effects of the regulatory actions on small versus large entities. A summary of the economic impacts relative to the profitability criterion is provided below.

The measures contained in this final rule affect vessels with LA and LAGC scallop permits. The Framework 23 document from the Council provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time (i.e., vessels that receive annual scallop allocations that are 40 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP) LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits (i.e., vessels that receive annual scallop allocations that are 8.33 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP). In FY 2010, the first year of the LAGC IFQ program, 333 active IFQ (including IFQ permits issued to vessels with a LA scallop permit), 122 NGOM, and 285 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but the decline would likely be less than 10 permits per year.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

A summary of the economic impacts of adopted and alternative measures is provided below. A detailed analysis of the economic impacts can be found in Section 5.4 of the Framework 23 document (see **ADDRESSES**). All economic values are presented in terms of 2010 dollars.

In summary, in the short-term, the aggregate economic impact of this action on small businesses could range from a low negative to low positive, depending on the extent that positive impacts of the measures outweigh the costs of TDD requirement. These measures are not expected to have significant impacts on the viability of the vessels, especially in a highly profitable industry like the scallop fishery. Over the long-term, Framework 23 is expected to have positive economic impacts for the participants of the scallop fishery and related businesses. This action is not expected to have a considerable adverse impact on the net revenues and profits of the majority of the scallop vessels in the short and the medium term.

Economic Impacts of the Final Action

The following describes all of the alternatives considered by the Council.

1. Requirement To Use a TDD

This action implements a requirement for some scallop vessels to use a TDD from May 1 through October 31 in waters west of 71° W long. This requirement is applicable to all LA vessels (regardless of permit category or dredge size) and to those LAGC vessels that fish with a dredge(s) that has a width of 10.5 ft (3.2 m) or greater. The Council estimates that the cost of a new dredge plus the cost of freight would be about $5,000 for a standard dredge, and $2,500 to $3,000 for smaller dredges. The cost of buying a dredge and the freight cost will be a very small proportion (1 to 2 percent) of the average scallop revenues per LA vessel, even when the maximum estimate of costs is used. For an average LAGC vessel that uses only one dredge, the cost could be small, as well, amounting to about 2 percent of scallop revenue. Alternatively, for some vessels that use two dredges, the cost of buying and installing the dredges could be higher. Some of these vessels could choose to fish during times and in areas for which a TDD is not required.

The Council considered two other alternatives regarding which vessels would be required to use a TDD: One would have required the TDD for all LA vessels and no LAGC vessels, and thus would not have any adverse impacts on the LAGC IFQ vessels. The other non-selected alternative would have required the use of TDD for all vessels, including all LA and LAGC IFQ vessels, and would have had negative impacts on some LAGC IFQ vessels that use smaller dredges. There are some short-term costs associated with buying and installing TDDs under all alternatives, but these costs are not large and are not expected to have adverse impacts on the financial viability of small business entities. Indirect positive economic benefits over the medium to long term are expected to outweigh these costs under the adopted measure, particularly because it exempts LAGC vessels that use small dredges.

The option to have the TDD be required west of 71° W long. covers the majority of areas the scallop fishery and expected turtle interactions in the Mid-Atlantic overlap and excludes GB, where interactions with turtles are rare. This adopted measure minimizes the economic impacts for scallop vessels that fish solely in GB east of 71° W long. and those that fish in the Gulf of Maine. The adopted measure exempts LAGC vessels with dredges less than 10.5 ft (3.2 m) in width from TDD requirement, mitigating some of these negative impacts on the smaller boats fishing in those areas. The only other location option related to the TDD requirement was the area used to set effort limitations in Framework 22, which is the greatest area of overlap in the

distribution of scallop fishing gear and sea turtles, with the exception of waters due south of Rhode Island. Thus, the adopted location option excludes those areas that LAGC vessels are active, and minimizes the negative economic impacts of TDD requirement on those vessels. Exempting LAGC vessels that use a dredge less than 10.5 ft (3.2 m) wide mitigates the impacts of the adopted boundary option and minimizes the differences between the impacts of the two location options considered.

Based on research indicating that using a TDD is not expected to have negative impacts on scallop landings, the season for the TDD requirement will probably have marginal economic impacts on the fishery overall. LA vessels are unlikely to change dredges during the year, once they are required to operate with a TDD during a part of the year. Therefore, the relative difference between the adopted season option (May 1 through October 31) and other non-selected options (i.e., May 1 through November 1, or June 1 through October 31) is likely to have only negligible impacts on these vessels. The difference between the season options could impact LAGC IFQ vessels relatively more than the LA vessels, but exempting LAGC IFQ vessels that use dredges less than 10.5 ft (3.2 m) wide prevents the adopted measure from negatively affecting smaller vessels. The increase in costs could also be minimized to some degree by leasing quota to LAGC IFQ vessels that fish in other areas. The shortest season considered by the Council (June through October) would have had the least impacts, and the longest considered season option (May through November) would have had the largest impact on vessels. The adopted season option maximizes the benefits of reducing the impacts on turtles, while not impacting a large proportion of scallop landings.

The adopted implementation date of the TDD requirements, 1 year after Framework 23 is implemented (i.e., May 2013, if Framework 23 is implemented in March 2012), allows manufacturers enough time to build dredges and gives vessels time to fish with the new dredge before the TDD requirement begins. A shorter period for implementation, such as the non-selected options for 90 days and 180 days after Framework 23's implementation, would not be feasible because so many dredges need to be built and it may not be possible to have all dredges manufactured in time. Overall, there are no other alternatives that would generate higher economic benefits for the participants of the scallop fishery.

2. Adjustments to the AMs Related to the Scallop Fishery's YTF Sub-ACLs

This action revises the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures will be during months with the highest YTF catch rates when an overage occurs, rather than beginning at the start of the FY and running for consecutive months under No Action. Overall, these modifications are not expected to have large impacts on scallop vessels, given that only a small percentage of LA scallop landings took place in those areas. Because the revised closure schedules include the winter months, they will shift effort to seasons when the meat weights are larger, benefiting the scallop resource and increasing landings and overall economic benefits for the scallop vessels in the medium to long term. There are no other alternatives that would generate higher economic benefits for the participants of the scallop fishery.

The action to re-evaluate the AM determination mid-year, thus allowing for more flexibility in determining the appropriate AM seasonal closure length, is positive for LA scallop vessels compared to No Action. Although adjusting the FY to which the AMs would apply could result in higher benefits to the scallop fishery (e.g., if YTF AMs were triggered the year after the overage occurred), these measures were not considered by the Council and can be re-examined in a future framework action. Thus, given the two alternatives considered by the Council, the selected action generates the higher economic benefits for the participants of the scallop fishery.

3. Modifications to the NGOM Management Program

This action allows all vessels with a Federal NGOM permit to fish exclusively in state waters, on a trip-by-trip basis, without the scallop catch from exclusive state water trips counted against the Federal NGOM TAC. This change is not expected to have any significant impacts under the current resource conditions on landings and revenues from this area. However, if the scallop resource abundance and landings within the State of Maine's waters increase in the future, this action could prevent a reduction in landings from federally permitted NGOM vessels fishing in the NGOM. This action could potentially have positive economic impacts on the vessels that fish both in the state and Federal waters. In addition, this action will keep the Federal NGOM hard-TAC at 70,000 lb (31.74 mt), which will have a positive economic impact on the participants of the NGOM scallop fishery. The only other TAC alternative would have lowered the Federal TAC to 31,000 lb (14.06 mt) to prevent excess fishing in the NGOM above potentially sustainable levels. Although the selected TAC alternative, if continued over the long-term, could result in reduced landings and revenues for the NGOM fishery if effort in Federal waters increases substantially, given the present lack of effort in the Federal portion of the NGOM, it is unlikely that keeping the TAC at this level will cause near-term problems. In addition, the Council will re-evaluate the NGOM TAC in the next framework adjustment that will set the specifications for FYs 2013 and 2014. Thus, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

4. Change to When a Scallop Trip Can Be Declared Through VMS

This action allows a vessel to declare into the scallop fishery shoreward of the VMS Demarcation Line rather than from a designated port, enabling the vessel to reduce steaming time to scallop fishing grounds and decease its fuel and oil costs. Therefore, this modification will have positive economic impacts on scallop vessels and small business entities. The only other alternative considered by the Council was No Action and, as such, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the scallop fishery and available online. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 2, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.10, paragraphs (e)(5)(i), (e)(5)(ii), (f) introductory text, (f)(1), (f)(2), (f)(3), (f)(4)(ii), (f)(5)(i)(A), (g)(1), (h)(1) introductory text, and (h)(8) are revised, and (g)(3)(iii) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owner/operators.

* * * * *

(e) * * *

(5) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

* * * * *

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a ''declared out of fishery'' VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a ''declared out of fishery'' trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (i.e., agrees that the vessel will not possess, retain, or land scallops while declared out of the fishery) by notifying the Regional Administrator through the VMS. If the vessel has not fished for any other fish (i.e., steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the NGOM scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery.

* * * * *

(4) * * *

(ii) Scallop Pre-Landing Notification Form for IFQ and NGOM vessels. Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and, if scallops will be landed, must include the vessel's captain/operator name, the

amount of scallop meats and/or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, the VTR serial number recorded from that trip's VTR, and whether any scallops were caught in the NGOM. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds. If no scallops will be landed, the form only requires the vessel's captain/operator name, the VTR serial number recorded from that trip's VTR, and indication that no scallops will be landed. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report.

(5) * * *

(i) * * *

(A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

* * * * *

(g) * * *

(1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, unless exempted under paragraph (f) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

* * * * *

(3) * * *

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location, pursuant to paragraph (f) of this section.

* * * * *

(h) * * *

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

* * * * *

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for the purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.60(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c).

* * * * *

■ 3. In § 648.11, paragraphs (g)(1) and (g)(5)(i)(A) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

* * * * *

(5) * * *

(i) * * *

(A) *Access Area trips.* (*1*) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full ''days.''

(*2*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(*3*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge

a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

* * * * *

■ 3. In § 648.14,

■ a. Paragraphs (i)(1)(iii)(A)(*1*)(*iv*), (i)(1)(iv)(C), (i)(2)(ii)(B)(*3*), (i)(2)(iv)(A), (i)(3)(iii)(C), (i)(3)(iv)(B), (i)(3)(v)(B), (i)(4)(i)(C), (i)(4)(i)(D), (i)(4)(i)(E), (i)(4)(ii)(A), (i)(4)(iii)(A), (i)(5)(i), and (i)(5)(iii) are revised;

■ b. Paragraphs (i)(1)(iv)(E), (i)(2)(v)(C), (i)(2)(v)(D), (i)(3)(iv)(C), (i)(3)(iv)(D) and (i)(5)(iv) are added; and

■ c. Paragraphs (i)(1)(iii)(A)(*1*)(*v*) and (i)(1)(iii)(A)(*2*)(*v*) are removed and reserved.

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has been harvested.

* * * * *

(iv) * * *

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(*3*) After April 30, 2013, fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this chapter.

* * * * *

(iv) * * *

(A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

* * * * *

(v) * * *

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

* * * * *

(3) * * *

(iii) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

* * * * *

(iv) * * *

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(b).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) * * *

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification published in the **Federal Register** stating that the number of LAGC trips have been taken, as specified in § 648.60.

* * * * *

(4) * * *

(i) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not be participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

* * * * *

(ii) * * *

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(5)(ii) and (iii).

* * * * *

(iii) * * *

(A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

* * * * *

(5) * * *

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

* * * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

* * * * *

■ 4. In § 648.51, paragraph (b)(1) is revised and paragraph (b)(5) is added to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section and in § 648.60(g)(2). However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

(5) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) *Requirement to use chain mats.* See § 223.206(d)(11) of this chapter for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame*—(A) Beginning May 1, 2013, and from May 1 through October 31 every year, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(*1*) through (b)(5)(ii)(A)(*5*) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(*1*) The cutting bar must be located in front of the depressor plate.

(*2*) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(*3*) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar;

(*4*) Struts must be spaced 12 in (30.5 cm) apart or less from each other.

(*5*) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 in (30.5 cm) in length.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD except that such a vessel is exempt from the ''bump out'' requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m) because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) *TDD-related definitions.* (*1*) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(*2*) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(*3*) The top of the dredge frame refers to the posterior point of the depressor plate.

(*4*) The struts are the metal bars connecting the cutting bar and the depressor plate.

* * * * *

■ 5. In § 648.53, paragraphs (b)(4)(vii), (h)(2) introductory text, (h)(2)(i), (h)(2)(ii)(C), (h)(2)(iv), (h)(3)(i)(A), and (h)(5)(iii) are revised to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(b) * * *

(4) * * *

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip will receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) of this section, but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels will receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) is first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS − 4.1 DAS = 3.7 DAS).

* * * * *

(h) * * *

(2) *Calculation of IFQ.* The ACL allocated to IFQ scallop vessels, and the ACL allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(4)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the ACL allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(4)(i) and (ii) of this section.

(ii) * * *

(C) *Index to determine contribution factor.* For each eligible IFQ scallop

vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in paragraph (a)(4) of this section and the method of calculating the IFQ provided in paragraph (h) of this section.

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125
5	1.25

* * * * *

(*iv*) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

* * * * *

(3) * * *

(i) * * *

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(ii) of this section.

* * * * *

(5) * * *

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. A vessel's total IFQ allocation can be transferred only once during a given fishing year. For example, a vessel owner can complete several transfers of portions of his/her vessel's IFQ during the fishing year, but cannot complete a temporary transfer of a portion of its IFQ then request to either temporarily or permanently transfer the entire IFQ in the same fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

* * * * *

■ 6. In § 648.55, paragraphs (c)(1) and (c)(5) are revised to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(c) * * *

(1) *OFL.* OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as specified in paragraphs (c)(2) through (c)(5) of this section.

* * * * *

(5) *Sub-ACLs for the limited access and LAGC fleets.* The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in § 648.53(b)(4)(iii).

* * * * *

■ 7. In § 648.56, paragraph (d) is revised to read as follows:

§ 648.56 Scallop research.

* * * * *

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (a)(4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process as identified in § 648.60(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

* * * * *

■ 8. In § 648.59, paragraph (b)(3) and the heading of paragraph (c) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude
CAIA1	41°26′ N	68°30′ W
CAIA2	40°58′ N	68°30′ W
CAIA3	40°54.95′ N	68°53.40′ W
CAIA4	41°04.30′ N	69°01.29′ W
CAIA1	41°26′ N	68°30′ W

* * * * *

(c) *Closed Area II Access Area.*

* * * * *

■ 9. In § 648.60, the section heading is revised and paragraph (g)(2) is revised to read as follows:

§ 648.60 Sea scallop access area program requirements.

* * * * *

(g) * * *

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop

vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in § 648.59 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

* * * * *

■ 10. In § 648.61, paragraph (a)(4) is revised to read as follows:

§ 648.61 EFH Closed Areas.

(a) * * *

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bounded by straight lines connecting the following points in the order stated, and so that the line connecting points CI1 and CIH1, and CI2 and CIH3 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between those points:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04.30′ N	69°01.29′ W
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°54.95′ N	68°53.40′ W
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°54.95′ N	68°53.40′ W

* * * * *

■ 11. In § 648.62, the section heading, paragraphs (a), (b) introductory text, (b)(2), and (c) are revised to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20' N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL specified in § 648.53(a).

* * * * *

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

* * * * *

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel can declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

■ 12. In § 648.63, paragraphs (b)(2)(i) and (b)(2)(iii) are revised to read as follows:

§ 648.63 General category sectors and harvest cooperatives.

* * * * *

(b) * * *

(2) * * *

(i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to an IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL catch shall not change, but the amount

of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

* * * * *

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels specified in § 648.53(a)(4)(i) or (ii).

* * * * *

■ 13. In § 648.64, paragraphs (b)(2)(i), (b)(2)(ii), (c)(2), and (e) are revised, and paragraph (f) is removed and reserved to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

* * * * *

(b) * * *

(2) * * *

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less	October through November.
3.1–14	September through November.
14.1–16	September through January.
16.1–39	August through January.
39.1–56	July through January.
Greater than 56	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less	September through November.
2.0–2.9	August through January.
3.0–3.9	March and August through February.
4.0–4.9	March and July through February.
5.0–5.9	March through May and July through February.
6.0 or greater	March through February.

* * * * *

(c) * * *

(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.
15.1–16	March through June and November through February.
16.1–18	March through July and November through February.
18.1–19	March through August and October through February.
19.1 or more	March through February.

* * * * *

(e) *Process for implementing the AM.* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure. The initial projected estimate shall be updated after the end of each scallop fishing year once complete fishing year information becomes available. An AM implemented at the start of the fishing year will be reevaluated and adjusted proportionately, if necessary, once updated information is obtained. For example, if in January 2013, the preliminary estimate of 2012 Southern New England/Mid-Atlantic yellowtail flounder catch is estimated to be 5 percent over the 2012 sub-ACL, the Regional Administrator shall implement AMs for the 2013 scallop fishing year in that stock area. Based on the schedule in paragraph (c)(2) of this section, limited access vessels would be prohibited from fishing in the area specified in paragraph (c)(1) of this section for 4 months (i.e., March through May 2013, and February 2014). Continuing the example, after the 2012 fishing year is completed, if the final estimate of Southern New England/Mid-Atlantic yellowtail flounder catch indicates the scallop fishery caught 1.5 percent of the sub-ACL, rather than 5 percent, the Regional Administrator, in accordance with the APA, would adjust the AM for the 2014 fishing year based on the overage schedule in paragraph (c)(2) of this section. As a result, limited access vessels would be subject to a 2-month seasonal closure in March and April 2013. In this example, due to the availability of final fishing year data, it is possible that the original AM closure was already in effect during the month of May. However, the unnecessary AM closure in February 2014 would be avoided. If the Regional Administrator determines that a final estimate is higher than the original projection, the Regional Administrator, if necessary, shall make adjustments to the current fishing year's respective AM closure schedules in accordance with the overage schedule in paragraphs (b)(2)(i), (b)(2)(ii), and (c)(2) of this section.

[FR Doc. 2012–8386 Filed 4–5–12; 8:45 am]

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Proposed Rules

Federal Register
Vol. 77, No. 67
Friday, April 6, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 1046

[Docket No. DOE–HQ–2012–0002]

RIN 1992–AA40

Protective Force Personnel Medical, Physical Readiness, Training, and Access Authorization Standards

AGENCY: Department of Energy.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: This document announces that the period for submitting comments on the proposed rule to amend the standards for medical, physical performance, training, and access authorizations for protective force (PF) personnel employed by contractors providing security services to the Department will be extended until April 13, 2012.

DATES: The comment period for the proposed rule published March 6, 2012 (77 FR 13206), is extended. The Department of Energy (DOE) will accept comments, data, and information on the proposal received no later than April 13, 2012.

ADDRESSES: You may submit comments, identified by DOE–HQ–2012–0002 and/or 1992–AA40, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 1992-AA40@hq.doe.gov.* Include DOE–HQ–2012–0002 and/or 1992–AA40 in the subject line of the message.
- *Mail:* Mailing Address for paper, disk, or CD–ROM submissions: Department of Energy, Office of Security Policy, (HS–51, Attn: John Cronin), 1000 Independence Ave. SW., Washington, DC 20585–1290.
- *Hand Delivery/Courier:* Street Address: Department of Energy, Office of Security Policy, (HS–51, Attn: John Cronin), 1000 Independence Ave. SW., Washington, DC 20585–1290.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or contact John Cronin at (301) 903–6209 prior to visiting Department of Energy, Office of Security Policy, (HS–51), 19901 Germantown Rd., Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. John Cronin, Office of Security Policy at (301) 903–6209; *John.Cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 6, 2012, DOE published a proposed rule to revise the standards for medical, physical performance, training, and access authorizations for PF personnel employed by contractors providing security services to the Department. (77 FR 13206) Commenters requested an extension of the comment period until April 13, 2012, stating that the extension was needed to allow sufficient time to address many important issues in the proposed revisions. Commenters cited the need to collect information and thoughts from various sites to prepare comments from the National Council of Security Police, and stated that the additional week would allow time to gather all the information and prepare focused comments. DOE has determined that an extension of the public comment period is appropriate based on the foregoing reasons and is hereby extending the comment period. DOE will consider any comments received by April 13, 2012.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on April 2, 2012.

Glenn S. Podonsky,

Chief Health, Safety And Security Officer, Office of Health, Safety and Security.

[FR Doc. 2012–8327 Filed 4–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 series reciprocating engines. That NPRM proposed to require replacing certain crankshafts of affected engine models. This action revises that NPRM by including the IO–390, AEIO–390, and AEIO–580 series engine models having affected crankshafts. We are proposing this supplemental NPRM to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by June 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; phone: 570–323–6181; fax: 570–327–7101, or on the internet at *www.Lycoming.Textron.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM supersedure to amend 14 CFR part 39 to include an AD that would apply to Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 series reciprocating engines. That NPRM published in the **Federal Register** on August 12, 2011 (76 FR 50152). That NPRM supersedure proposed to retain all of the requirements of AD 2006–20–09 (71 FR 57407, September 29, 2006), and would expand the affected engines by moving the start date of affected engine models back from March 1, 1997, to January 1, 1997. All references to March 1, 1997 in AD 2006–20–09, and the NPRM supersedure are, therefore, obsolete and the start date of affected models in this supplemental NPRM supersedure is changed to January 1, 1997. Lycoming also changed its Service Instruction No. 1009AS dated May 25, 2006 to Service Instruction No. 1009AU, dated November 18, 2009. The changes to Service Instruction 1009 do not affect the engine overhaul time.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (76 FR 50152, August 12, 2011), Lycoming Engines made us aware of additional engine models with crankshafts affected by the unsafe condition. They are the IO–390, AEIO–390, and AEIO–580 series reciprocating engines. These engine models were considered experimental and did not have a type certificate when we issued AD 2006–20–09 (71 FR 57407, September 29, 2006). These models now have type certificates and so we propose to add them in this supplemental NPRM.

Comments

We gave the public the opportunity to comment on the original NPRM. We received no comments on that NPRM (76 FR 50152, August 12, 2011).

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the original NPRM (76 FR 50152, August 12, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would retain all of the requirements of AD 2006–20–09 (71 FR 57407, September 29, 2006). This supplemental NPRM would also change the start date of affected engine models from March 1, 1997, to January 1, 1997, and would add Lycoming Engines IO–390, AEIO–390, and AEIO–580 series reciprocating engines to the applicability.

Costs of Compliance

We estimate that this proposed AD would require no additional costs of compliance over those in the original AD 2006–20–09, which are $60,384,000. This proposed AD carries over the original costs of compliance. We estimate that this proposed AD would affect 3,774 engines installed on airplanes of U.S. registry. Because the proposed AD compliance interval coincides with engine overhaul or other engine maintenance, we estimate no additional labor hours will be needed to comply with this proposed AD. Parts would cost about $16,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to be $60,384,000. Our estimate is independent of any possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications

under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Lycoming Engines (formerly Textron Lycoming): Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD.

(a) Comments Due Date

We must receive comments by June 5, 2012.

(b) Affected ADs

This AD supersedes AD 2006–20–09, Amendment 39–14778 (71 FR 57407, September 29, 2006).

(c) Applicability

This AD applies to Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, IO–390, AEIO–390, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, AEIO–580, and IO–720 series reciprocating engines listed by engine model number and serial number in Table 1, Table 2, Table 3, or Table 4 of Lycoming Mandatory Service Bulletin (MSB) 569A, dated April 11, 2006, and those engines with crankshafts listed by crankshaft serial number in Table 5 of Lycoming MSB 569A, dated April 11, 2006. These applicable engines are manufactured new, rebuilt, overhauled, or had a crankshaft installed after January 1, 1997.

(d) Unsafe Condition

This AD results from Lycoming Engines discovering that the March 1, 1997 start date of affected engine models in MSB No. 569A, is incorrect. This AD also results from the need to include the IO–390, AEIO–390, and AEIO–580 series engine models having affected crankshafts. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

(e) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Credit for Previous Actions

(1) If you previously complied with any of the following ADs, no further action is required:

(i) AD 2002–19–03 (67 FR 59139, September 20, 2002); or

(ii) AD 2005–19–11 (70 FR 54618, September 16, 2005); or

(iii) AD 2006–06–16 (71 FR 14638, March 23, 2006).

(2) If you previously accomplished any of the following Lycoming MSBs, no further action is required:

(i) MSB No. 552; or

(ii) MSB No. 553; or

(iii) Supplement No. 1 to MSB No. 553; or

(iv) MSB No. 566; or

(v) Supplement No. 1 to MSB No. 566; or

(vi) MSB No. 569, MSB No. 569A, and Supplement 1 to MSB No. 569A.

(3) If Lycoming Engines manufactured new, rebuilt, overhauled, or repaired your engine, or replaced the crankshaft in your engine before January 1, 1997, and you have not had the crankshaft replaced, no further action is required.

(4) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine serial number (S/N), and Table 5 of MSB No. 569A, dated April 11, 2006, does not list your crankshaft S/N, no further action is required.

(5) For engine model TIO–540–U2A, S/N L–4641–61A, no action is required.

(g) Engines for Which Action Is Required

If you did not previously comply with any of the ADs listed in paragraph (f)(1) of this AD, do the following:

(1) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine S/N, and Table 5 of MSB No. 569A, dated April 11, 2006, lists your crankshaft S/N, replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(i) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AU, dated November 18, 2009; or

(ii) The next separation of the crankcase, or

(iii) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(2) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, does not list your engine S/N, and Table 5 of MSB No. 569A does list your crankshaft S/N (an affected crankshaft was installed as a replacement), replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(i) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AU, dated November 18, 2009; or

(ii) The next separation of the crankcase, or

(iii) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(h) Prohibition Against Installing Certain Crankshafts

After the effective date of this AD, do not install any crankshaft that has a S/N listed in Table 5 of Lycoming MSB No. 569A, dated April 11, 2006, into any engine.

(i) Alternative Methods of Compliance (AMOC)

The Manager, New York Aircraft Certification Office, may approve AMOCs to this AD. Use the procedures in 14 CFR 39.19 to make your request. AMOCs approved for AD 2002–19–03 (67 FR 59139, September 20, 2002) and AD 2006–20–09 (71 FR 57407, September 29, 2006) are approved as AMOCs for this AD.

(j) Related Information

(1) For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov.*

(2) For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone: 570–323–6181; fax: 570–327–7101, or on the internet at *www.Lycoming.Textron.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 2, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–8287 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0328; Directorate Identifier 2011–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports of jamming/malfunctioning of the left-hand engine thrust control mechanism. This proposed AD would require modifying the left-hand engine upper core-cowl. We are proposing this AD to prevent jamming/malfunctioning of the left-hand engine thrust control mechanism, which could lead to loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 21, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue. Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0328; Directorate Identifier 2011–NM–259–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–38, dated October 19, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several reported incidents of jamming/malfunctioning of the left hand (L/H) engine thrust control mechanism on the affected aeroplanes. The investigation has shown that an improperly stowed or dislodged upper core-cowl-door Hold Open Rod, can impede a Fuel Control Unit (FCU) function by obstructing the movement of the FCU actuating lever arm, hence rendering the L/H engine thrust control inoperable.
>
> Due to the engine's orientation, the subject FCU fouling is limited only to the L/H engine installation on the affected twin engine powered aeroplanes; however the potential hazard of any in-flight engine shut down caused by jammed engine fuel control lever is a safety concern that warrants mitigating action.
>
> In order to help alleviate the possibility of an in-flight engine shut down due to the subject fouling of the FCU lever by the core-cowl-door Hold Open Rod, Bombardier has issued a Service Bulletin (SB) to install a new bracket at the L/H engine upper core-cowl-door location. This [Canadian] directive is issued to mandate the incorporation of the SB 601R–71–033 on the affected aeroplanes.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 601R–71–033, dated August 24, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 601 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $54 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $134,624, or $224 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0328; Directorate Identifier 2011–NM–259–AD.

(a) Comments Due Date

We must receive comments by May 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, and 8000 through 8112 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 71: Powerplant.

(e) Reason

This AD was prompted by reports of jamming/malfunctioning of the left-hand engine thrust control mechanism. We are issuing this AD to prevent jamming/malfunctioning of the left-hand engine thrust control mechanism, which could lead to loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 36 months or 6,000 flight hours after the effective date of this AD, whichever occurs first: Modify the left-hand engine upper core-cowl, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–71–033, dated August 24, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–38, dated October 19, 2011; and Bombardier Service Bulletin 601R–71–033, dated August 24, 2011; for related information.

Issued in Renton, Washington, on March 15, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–8221 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0316; Airspace Docket No. 12–ANM–1]

Proposed Amendment of Class E Airspace; Billings, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Billings Logan International Airport, Billings, MT, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Billings Logan International Airport. This action also would make a minor adjustment to the geographic coordinates of the airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before May 21, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0316; Airspace Docket No. 12–ANM–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601

Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0316 and Airspace Docket No. 12–ANM–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0316 and Airspace Docket No. 12–ANM–1''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Billings Logan International Airport, Billings, MT. Controlled airspace is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Billings Logan International Airport. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Billings Logan International Airport, Billings, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Billings, MT [Modified]

Billings Logan International Airport, MT
(Lat. 45°48′28″ N., long. 108°32′34″ W.)

That airspace extending upward from 700 feet above the surface within a 16-mile radius of Billings Logan International Airport; that airspace extending upward from 1,200 feet above the surface within a 63-mile radius of the Billings Logan International Airport.

Issued in Seattle, Washington, on March 29, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–8245 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–9309; 34–66720; IC–30026; File No. S7–12–10]

RIN 3235–AK50

Investment Company Advertising: Target Date Retirement Fund Names and Marketing

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission is reopening the period for public comment on amendments it originally proposed in Securities Act Release No. 9126 to allow interested persons to submit comments on the results of investor testing regarding target date retirement funds. The rule proposal would, if adopted, require a target date retirement fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to the first use of the fund's name in marketing materials; require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time, together with a statement that would highlight the fund's final asset allocation; require a statement in marketing materials to the effect that a target date retirement fund should not be selected based solely on age or retirement date, is not a guaranteed investment, and the stated asset allocations may be subject to change; and provide additional guidance regarding statements in marketing materials for target date retirement funds and other investment companies that could be misleading.

DATES: The comment period for the proposed rule published June 23, 2010, at 75 FR 35920, is reopened. Comments should be received on or before May 21, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File No. S7–12–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–10. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: J. Matthew DeLesDernier, Attorney-Adviser, at (202) 551–6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is reopening the period for public comment on proposed rule amendments that are intended to provide enhanced information to investors concerning target date retirement funds and reduce the potential for investors to be confused or misled regarding these and other investment companies. These amendments were proposed on June 16, 2010,[1] and the comment period initially closed on August 23, 2010. The Commission's proposal would, if adopted, amend rule 482 under the Securities Act of 1933 and rule 34b–1 under the Investment Company Act of 1940 to require a target date retirement fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to the first use of the fund's name in marketing materials. The proposal also would amend rule 482 and rule 34b–1 to require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time, together with a statement that would highlight the fund's final asset allocation. In addition, the proposal would amend rule 482 and rule 34b–1 to require a statement in marketing materials to the effect that a target date retirement fund should not be selected based solely on age or retirement date, is not a guaranteed investment, and the stated asset allocations may be subject to change. Finally, the proposal would amend rule 156 under the Securities Act to provide additional guidance regarding statements in marketing materials for target date retirement funds and other investment companies that could be misleading.

The Commission recently engaged a consultant to conduct empirical research on individual investors' understanding of target date retirement funds and marketing materials related to those funds. Investors participating in an online survey were asked questions about, among other things, documents containing information about a hypothetical target date retirement fund, including information that would be required by the proposed amendments, if adopted. We have placed in the comment file for the proposed rule amendments the consultant's report concerning the online survey.[2] In order to provide all persons who are interested in this matter an opportunity to comment on this additional material, we believe that it is appropriate to reopen the comment period before we take action on the proposal.

We invite additional comment on the proposal in light of this material, and on any other matters that may have an effect on the proposal.

Accordingly, we will extend the comment period until May 21, 2012.

Dated: April 3, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8348 Filed 4–5–12; 8:45 am]

BILLING CODE 8011–01–P

[1] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)].

[2] *See* Comment File No. S7–12–10, available at *http://www.sec.gov/comments/s7-12-10/s71210.shtml.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0156]

RIN 1625–AA08

Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the swim segment of the ''Ironman 70.3 National Harbor'' triathlon, a marine event to be held on the waters of the Potomac River in Prince George's County, Maryland on August 5, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Potomac River and National Harbor Access Channel during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 21, 2012. Requests for public meetings must be received by the Coast Guard on or before April 20, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0156 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0156), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0156'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0156'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before May 7, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On August 5, 2012, the National Harbor Marina will sponsor the Ironman 70.3 National Harbor triathlon at Oxon Hill, Prince George's County, Maryland. The swim segment of the triathlon will occur on the Potomac River and in portions of the National Harbor Access Channel from 6 a.m. to 10 a.m. The sponsor has stated that this marine event is not expected to be postponed or rescheduled. The event will consist of approximately 3,000 participants competing on a designated, marked swim course with a distance of 1.2 miles. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Potomac River and National Harbor Access Channel, in Prince George's County, MD. The regulations will be in effect from 5 a.m. until 11 a.m. on August 5, 2012. The regulated area includes all waters of the Potomac River, National Harbor Access Channel, within an area from the shoreline and then west to a line connecting the following positions: From position latitude 38°47′28″ N, longitude 077°01′20″ W; thence southerly to position latitude 38°46′49″ N, longitude 077°01′28″ W. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed only when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Potomac River and National Harbor Access Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed only when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Potomac River and National Harbor Access Channel during the event.

Although this regulation prevents traffic from transiting a portion of the Potomac River and National Harbor Access Channel during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area, if the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0156 to read as follows:

§ 100.35–T05–0156 Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Potomac River, National Harbor Access Channel, within an area from the shoreline and then west to a line connecting the following positions: from position latitude 38°47′28″ N, longitude 077°01′20″ W; thence southerly to position latitude 38°46′49″ N, longitude 077°01′28″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period:* This section will be enforced from 5 a.m. until 11 a.m. on August 5, 2012.

Dated: March 22, 2012.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2012–8297 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0245; FRL–9345–1]

RIN 2070–ZA16

Methyl Bromide; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of methyl bromide in or on cotton, undelinted seed under the Federal Food, Drug, and Cosmetic Act (FFDCA) because there is a need for imported undelinted cottonseed for use as feed for dairy cattle in the United States. This imported cottonseed has become necessary because cottonseed is a critical part of the dairy cattle diet and the 2011 U.S. cotton crop was significantly below average due to severe drought conditions in Texas.

DATES: Comments must be received on or before June 5, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0245, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays).

Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0245. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8059; email address: *nesci.kimberly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified. Comments not timely-filed will not be considered in EPA's decision on this proposal or in any subsequent proceedings in this rulemaking.

II. This Proposal

EPA on its own initiative, under FFDCA section 408(e), 21 U.S.C. 346a(e), is proposing to establish a tolerance for residues of the fumigant methyl bromide, in or on cotton, undelinted seed at 150 parts per million (ppm) in newly proposed 40 CFR 180.124. The Animal and Plant Health Inspection Service, an agency of the United States Department of Agriculture (USDA–APHIS), supports EPA's proposal to establish this tolerance.

Undelinted cottonseed, also known as fuzzy cottonseed, needs to be imported into the United States for use as feed for dairy cattle in the United States. Cottonseed is a critical part of the dairy cattle diet because it is high in protein, energy, and fiber. In 2011, the size of the U.S. cotton crop was significantly below average due to severe drought conditions in Texas, the leading cotton producing state in the United States. As a result, U.S. cottonseed has been in short supply since the November 2011 harvest causing hardship for U.S. dairy cattle farmers.

The USDA–APHIS has, in the past, pursuant to its authorities from the Plant Protection Act (PPA, as amended, 7 U.S.C. 7701 et seq.), required imported cottonseed to be fumigated as a condition of entry into the United States. APHIS evaluated the use of methyl bromide for such fumigation and has determined through efficacy studies that methyl bromide does effectively mitigate potential pests of concern such as *Fusarium oxysporum* f. sp.

vasinfectum strains Boggabilla (VCG01112) and Cecil Plains (VCG01111) that imported undelinted cottonseed could harbor. These *Fusarium* strains are not known to occur in the United States. *Fusarium oxysporum* f. sp. *vasinfectum* causes Fusarium wilt of cotton and, if introduced, these foreign strains could cause significant losses to U.S. cotton crops. The PPA authorizes the Secretary of Agriculture (who has delegated this authority to APHIS) to facilitate imports of agricultural commodities that pose a risk of harboring plant pests, among other pests, in ways that will reduce the risk of dissemination of plant pests that could constitute a threat to crops and other plants or plant products and burden interstate or foreign commerce. The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, noxious weed, or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest into the United States or the dissemination of a plant pest within the United States.

As a feed commodity, imported cottonseed that has been fumigated with methyl bromide requires a tolerance. Without a tolerance or exemption, food or feed containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food or feed may not be distributed in interstate commerce (21 U.S.C. 331(a)).

III. Determination of Safety and Exposure

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *''

Given the characteristics of methyl bromide, EPA concludes that the use of methyl bromide on cottonseed will result in detectable residues on the cottonseed itself. Although the Agency does not have controlled fumigation trial data for this cottonseed use, EPA has received such data for numerous other related commodities and use patterns. The data that would be most representative of potential residues in/on cottonseed are from methyl bromide trials with tree nuts because commodities with higher fat content, such as nuts and oils, tend to have higher residues. EPA is proposing a tolerance level of 150 parts per million (ppm), which is based on the highest residue found in tree nuts 24 hours after fumigation (138 ppm). Dissipation studies indicated that residues dissipate relatively quickly, which is consistent with the high vapor pressure of methyl bromide. Despite the tendency for rapid dissipation shown in numerous studies, the Agency believes there is still the potential for quantifiable residues in the imported cottonseed. However, residues are likely to be much less than the proposed tolerance level.

EPA further concludes that the use of methyl bromide to fumigate imported cottonseed will not result in any human dietary exposure to methyl bromide residues. There are two potential human dietary exposure pathways from treated cottonseed: Cottonseed oil, an edible commodity produced from cottonseed, and livestock commodities from livestock fed treated cottonseed. Cottonseed itself is not consumed by humans, nor is it used to produce any other edible commodity because unrefined cottonseed and cottonseed meal contains a naturally occurring compound that is toxic to humans, gossypol.

Cottonseed will be imported for the purpose of feeding dairy cattle. There is no reasonable expectation of finite residues of methyl bromide in livestock commodities from the use of methyl bromide to fumigate cottonseed. Methyl bromide residues in/on feed items are likely to significantly dissipate during storage due to the volatile nature of methyl bromide. Should there be methyl bromide residues remaining, the methyl bromide would likely undergo considerable changes in the digestive system of livestock. Methyl bromide is an alkylating agent and will probably undergo chemical reactions with the contents of the gut. These chemical reactions break down the compound into a bromide ion and a methyl group; thus, there will be no absorption of methyl bromide into the edible tissues of livestock. Further, methyl bromide has a very low octanol-water co-efficient. Octanol-water co-efficient values measure the tendency for a chemical to partition into organic vs. aqueous environments, and is therefore commonly used to predict the likelihood for partitioning into fatty tissue where xenobiotics are more likely to persist. Chemicals that tend to bioaccumulate tend to have orders of magnitude higher octanol-water co-efficient values than methyl bromide. And, although methyl bromide tends to be lipid soluble, the low octanol-water co-efficient value overwhelms this chemical characteristic. For these reasons, EPA does not believe there will be transfer of methyl bromide residues into the edible tissues of livestock. In its Reregistration Eligibility Decision document for methyl bromide, EPA also determined that no livestock commodity tolerances for methyl bromide are needed under 40 CFR 180.6(a)(3) because there is no reasonable expectation of finite methyl bromide residues in livestock commodities. Any inorganic bromide residues on livestock feeding items resulting from fumigation of cottonseed with methyl bromide are covered by existing inorganic bromide tolerances at 40 CFR 180.124.

Even if the imported cottonseed were to be diverted to cottonseed oil production, there will be no human exposure to methyl bromide in the cottonseed oil. In producing oil from cottonseed, the oil is removed by mechanical high pressure screw, by solvent extraction, or a combination of the two processes. Under either procedure, the seed kernels are first rolled into flakes and heated in a cooker or conditioner to reduce moisture. Once the oil is extracted, it is refined by adding sodium hydroxide that removes impurities and soapstock from the oil. Most cottonseed oil is bleached to remove coloring agents and is then filtered. Finally, it is deodorized with steam under a partial vacuum to remove any off flavors. Bromide ion will be removed from the oil during the final clean-up steps because the bromide ion is water soluble and will be washed away during the sodium hydroxide refining procedure. See also Docket EPA–HQ–OPP–2006–0766 document number 0022 for further information on cottonseed processing. Because methyl bromide is a gas at room temperature, the heating procedures in cottonseed oil processing will dissipate all methyl bromide residues from the seed and oil. Cottonseed oil produced from cottonseed fumigated with methyl bromide would not contain residues of methyl bromide.

Accordingly, EPA has determined that there would be no human dietary exposure to methyl bromide from the use of methyl bromide to fumigate cottonseed. If meat, milk, or cottonseed

oil were imported rather than the cottonseeds themselves, no tolerance would be necessary. Because there will be no human dietary exposure to the methyl bromide in cottonseeds, EPA concludes that a methyl bromide tolerance in cottonseed, at the level proposed, will be safe for the general population, including infants and children.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method, the head-space procedure of King et al. is available for enforcement of methyl bromide tolerances. Samples are blended with water at high speed in air-tight jars for 5 minutes. After 15 minutes, the partitioned gas phase is sampled and analyzed by gas chromatography with electron capture detection (GC/EC). See the February 22, 2002, Residue Chemistry Chapter for the methyl bromide RED available in Docket EPA–HQ–OPP–2005–0123.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for methyl bromide on cottonseed.

V. Conclusion

A tolerance is proposed for residues of methyl bromide in cottonseed at 150 ppm based on the finding that there would be no human dietary exposure to methyl bromide from treated cottonseed and no exposure to children.

VI. Statutory and Executive Order Reviews

EPA, at its own initiative, proposes to establish a tolerance under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''*Regulatory Planning and Review''* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks''* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. Establishing a pesticide tolerance or exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''*Federalism''* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''*Consultation and Coordination with Indian Tribal Governments''* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 2012.

Steve Bradbury,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Add § 180.124 to subpart C to read as follows:

§ 180.124 Methyl bromide; tolerance for residues.

(a) *General.* A tolerance is established for residues of the fumigant methyl bromide, including metabolites and degradates, in or on the commodity in the table below. Compliance with the tolerance level specified below is to be determined by measuring only methyl bromide.

Commodity	Parts per million
Cotton, undelinted seed	150

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–8390 Filed 4–5–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 12–28]

Implementation of the Local Community Radio Act of 2010; Revision of Service and Eligibility Rules for Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on how to amend its rules to implement certain provisions of the Local Community Radio Act of 2010 (''LCRA'') that are not already the subject of Commission action. It also proposes changes to its rules intended to promote the low power FM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules.

DATES: Comments must be filed on or before May 7, 2012, and reply comments must be filed on or before May 21, 2012. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 5, 2012.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–25, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th St. SW., Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, or phone: 202–418–0530 or TTY: 202–418–0432).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202) 418–2789. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MM Docket No. 99–25, FCC No. 12–28, adopted March 19, 2012. A synopsis of the order segments of this decision were published in a previous issue of the **Federal Register**. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Comment Period and Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Paperwork Reducation Act of 1995

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 5, 2012.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; §§ 73.807, 73.809, 73.827, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal governments.

Number of Respondents and Responses: 21,337 respondents with multiple responses; 27,387 responses.

Estimated Time per Response: .0025–12 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; monthly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,146 hours.

Total Annual Costs: $39,750.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: On March 19, 2012, the FCC released a Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Third Order on Reconsideration, Creation of a Low Power Radio Service, MM Docket No. 99–25, FCC 12–28. In the *Fourth Further Notice of Proposed Rulemaking* (*Fourth FNPRM*), FCC 12–28, the FCC proposes to revise § 73.853(b) of the Commission's rules (''rules'') to permit federally recognized Native American Tribes and Alaska Native Villages (''Native Nations'') and entities owned or controlled by Native Nations to hold LPFM licenses. We have revised FCC Form 318 to reflect this proposal.

The FCC also proposes to modify its ownership rules. First, the FCC proposes to revise its cross-ownership rule to permit cross-ownership of an LPFM station and an FM translator or translators. Second, the FCC proposes to modify its cross-ownership rule to permit a full-service radio station permittee or licensee that is a Tribe or Tribal Organization to apply for an LPFM station and to hold an attributable interest in such station. Third, the FCC proposes to permit Tribes or Tribal Organizations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. We have revised FCC Form 318 to reflect this proposal.

The FCC further proposes to modify the point system used to select among mutually exclusive LPFM applicants and set forth in § 73.872 of the rules. First, the FCC proposes to modify the ''established community presence'' criterion to require that an applicant have maintained an established local presence for four years instead of the two years currently required. Second, it proposes to extend the ''established community presence'' standard in rural areas. Under the current rule, an LPFM applicant was deemed to have an established community presence if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The Fourth Further Notice proposes to modify the ten-mile requirement to twenty miles for all LPFM applicants proposing facilities located outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards. Third, the FCC proposes to allow local organizations, tribal organizations and/or tribes to file as consortia and receive one point under the established community presence criterion for each organization or tribe that qualifies for such a point. Fourth, the FCC proposes to award two points—as opposed to the one point currently awarded—to applicants qualifying under the local program origination criterion. Fifth, the FCC proposes to modify the point system to award a point to Native Nations and entities owned or controlled by Native Nations, when they propose to provide LPFM service to Native Nation communities. We have revised the Form 318 to reflect these changes to the point system.

Finally, the FCC proposes to modify the manner in which it processes requests for waiver of the second-adjacent channel minimum distance separation requirement, and to amend the rule that sets forth the obligations of LPFM stations with respect to interference to the input signals of FM translator or FM booster stations. We have revised the Form 318 to reflect these proposed changes.

FCC staff uses the data to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application. In addition, the information contained within this information collection ensures that (1) The integrity of the FM spectrum is not compromised, (2) unacceptable interference will not be caused to existing radio services, (3) statutory requirements are met, and (4) the stations operate in the public interest.

Summary of the Fourth Further Notice of Proposed Rulemaking

I. Introduction

1. In the *Fourth Further Notice of Proposed Rule Making* (*Fourth FNPRM*), we seek comment on proposals to amend our rules to implement the remaining provisions of LCRA and to promote a more sustainable community radio service. These changes are intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services. In addition, we seek comment on proposals to reduce the potential for licensing abuses.

II. Fourth Further Notice of Proposed Rulemaking

A. Changes to Technical Rules Required by the LCRA

2. A number of provisions of the LCRA require Commission action. We seek comment below on how to amend our rules to most faithfully implement these provisions of the LCRA.

1. Waiver of Second-Adjacent Channel Minimum Distance Separation Requirements

3. In 2007, the Commission established an interim waiver processing policy that permits an LPFM station that will receive increased interference or be displaced by a new or modified full-service FM station to seek waiver of the second-adjacent channel spacing requirements in connection with an application to move the LPFM station to a new channel. The Commission found that circumstances had changed considerably since it last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations. Specifically, in late 2006, the Commission had streamlined its licensing procedures, and announced the lifting of its freeze on the filing of community of license modification applications. These actions resulted in ''increased filings'' that the Media Bureau (''Bureau'') estimated could force approximately 40 LPFM stations to cease operations. For many of the LPFM stations at risk of displacement, the Bureau had identified alternate channels that would require waivers of the second-adjacent channel spacing requirements. To avoid ''potential harm to this small but not insignificant number of LPFM stations,'' the Commission adopted the waiver processing policy. In adopting this policy, the Commission relied on the general waiver provisions set forth in § 1.3 of the rules.

4. Section 3(b)(2)(A) of the LCRA explicitly grants the Commission the authority to waive the second-adjacent channel spacing requirements. Section 3(b)(2)(A) permits waivers where an LPFM station establishes, ''using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models,'' that its proposed operations ''will not result in interference to any authorized radio service.''

5. We tentatively conclude that the waiver standard set forth in section 3(b)(2)(A) of the LCRA supersedes the interim waiver processing policy adopted by the Commission in 2007. We note that, under the interim waiver processing policy, when the Commission considers a waiver request, it ''balance[s] the potential for new interference to the full-service station at issue against the potential loss of an LPFM station.'' Section 3(b)(2)(A) of the LCRA, on the other hand, clearly requires an LPFM station to establish that its proposed operations ''will not result in interference to any authorized radio service.'' It leaves no room for balancing of the potential for interference with the potential for loss of service. We seek comment on our tentative conclusion and our reasoning. We also seek comment on whether we should permit LPFM applicants to make the sort of showings we routinely accept from FM translator applicants to establish that ''no actual interference will occur.'' Section 74.1204(d) of the rules permits a translator applicant to demonstrate that ''no actual interference will occur'' due to ''lack of population'' and we have permitted translator applicants to use an undesired/desired signal strength ratio methodology to narrowly define areas of potential interference when proposing to operate near another station operating on a second- or third-adjacent channel. Are such showings consistent with the statutory mandate to accept showings that a proposed LPFM service ''will not result in interference to any authorized radio service''? Should we permit the use of directional antennas in conjunction with proposals attempting to protect second-adjacent stations?

6. We request comment on the factors that we should take into account and the showings we should require when considering requests for waiver of the second-adjacent channel spacing requirements. Should we require a showing that there are no fully-spaced channels available to the LPFM applicant? Should we take into account that the proposal would eliminate or reduce the interference received by the LPFM applicant? Should we consider whether the proposal would avoid a short-spacing between the proposed LPFM facilities and a full-service FM station, FM translator or FM booster station on a third-adjacent channel? Should we also take into account the interference protection and remediation obligations such short-spacing would trigger? Should we consider whether the proposal would result in superior spacing to full-service FM, FM translator or FM booster stations operating on co- and first-adjacent channels? Are there other factors or showings that we should consider?

7. Section 3(b)(2)(B) of the LCRA also sets out a framework for handling complaints when an LPFM station operating pursuant to a second-adjacent channel waiver has caused interference to the reception of any existing or modified full-service FM station ''without regard to the location of the station receiving interference.'' Upon receipt of a complaint of interference caused by an LPFM station operating pursuant to a second-adjacent channel waiver, the Commission must notify the LPFM station ''by telephone or other electronic communication within 1 business day.'' The LPFM station must ''suspend operation immediately upon notification'' by the Commission that it is ''causing interference to the reception of any existing or modified full-service FM station.'' It may not resume operations ''until such interference has been eliminated or it can demonstrate * * * that the interference was not due to [its] emissions.'' The LPFM station, however, may ''make short test transmissions during the period of suspended operation to check the efficacy of remedial measures.'' We propose to incorporate this framework for handling complaints into the rules. We seek comment on this proposal. We also request comment on whether and how we should define what constitutes a bona fide complaint that would trigger the Commission's obligation to notify the LPFM station at issue and that station's obligation to suspend operations. Finally, we solicit comment on whether and how to specify the showing an LPFM station operating pursuant to a second-adjacent channel waiver must make to demonstrate that it was not the source of the interference at issue.

2. Third-Adjacent Channel Interference Complaints and Remediation

8. When the Commission created the LPFM service in 2000, it declined to impose third-adjacent channel distance separation requirements, stating ''our own technical studies and our review of the record persuade us that 100-watt LPFM stations operating without [third]-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations.'' The Commission also noted that ''imposing [third]-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service.''

9. Subsequently, on reconsideration, the Commission again declined to impose third-adjacent channel separation requirements. However, it did establish complaint and license

modification procedures for third-adjacent channel interference. In doing so, the Commission stated:

> Although we expect it to be the rare case where an LPFM station operating on a [third-]adjacent channel causes more than a de minimis level of interference within the service area of a full power station protected by the distance separation requirements for other channel relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station.

The procedures are set forth in § 73.810 of the rules.

10. As noted, in 2001, we adopted third-adjacent channel spacing requirements at the direction of Congress. While we did not delete the third-adjacent channel complaint and license modification procedures from our rules, with the adoption of the spacing requirements, the procedures became irrelevant. Now, however, with the elimination of the third-adjacent spacing requirements under section 3 of the LCRA, a process for handling complaints of third-adjacent channel interference again has relevance. Congress has recognized this.

11. Rather than simply utilize the procedures set forth in § 73.810 of the rules, though, Congress has opted to impose broader remediation obligations, which are set forth in section 7 of the LCRA. Specifically, section 7 sets forth the following requirements:

- Section 7(1) of the LCRA requires the Commission to adopt ''the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in [§] 74.1203 of [the] rules.'' These obligations apply to LPFM stations that would be considered short-spaced under the existing third-adjacent channel spacing requirements (''Section 7(1) Stations'').
- Section 7(2) requires that a new LPFM station ''constructed on a third-adjacent channel'' must ''broadcast periodic announcements'' that alert listeners that any interference they are experiencing could be the result of the station's operations and that instruct affected listeners to contact the station to report any interference.
- Section 7(3) directs the Commission to modify § 73.810 of the rules to require ''[LPFM] stations on third-adjacent channels * * * to address interference complaints within the protected contour of an affected station'' and encourage them to address ''all other interference complaints.''
- Section 7(4) requires the Commission, to the extent possible, to ''grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.''
- Section 7(5) requires the Commission to ''permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission,'' ''accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station,'' and ''accept complaints of interference to mobile reception.''
- Section 7(6) requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations.

12. Below, we discuss certain preliminary issues and tentatively conclude that section 7 of the LCRA creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements, and one for LPFM stations that would not be considered short-spaced under those requirements. Then, we proceed to discuss each of those regimes. Given the comprehensive nature of the regimes created by section 7, we propose to eliminate the existing interference complaint and remediation procedures set forth in § 73.810 of the rules and replace them with those set forth below.

a. LPFM Interference Protection and Remediation Requirements

13. Section 7(1) and 7(3) of the LCRA both address the interference protection and remediation obligations of LPFM stations on third-adjacent channels. Only section 7(1) specifies requirements for ''low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements * * *'' With regard to such stations, Section 7(1) instructs the Commission to adopt ''the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in § 74.1203 of [the] rules.'' Section 7(3), in contrast, directs the Commission to modify § 73.810 of the rules to require ''[LPFM] stations on third-adjacent channels * * * to address interference complaints within the protected contour of an affected station'' and encourage them to address ''all other interference complaints.'' We tentatively conclude that, through these two provisions, Congress has created two different interference protection and remediation regimes—one that applies to Section 7(1) Stations and one that applies to all other LPFM stations (''Section 7(3) Stations''). We seek comment on this tentative conclusion.

14. We note that, were we to conclude otherwise, Section 7(1) Stations would be subject to different and conflicting interference protection and remediation obligations. Specifically, under section 7(1), LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements must ''eliminate'' any actual interference they cause to the signal of any authorized station in areas where that station's signal is ''regularly used.'' This requirement encompasses locations beyond the authorized station's protected contour. In contrast, section 7(3) merely requires LPFM stations to ''address'' complaints of interference occurring within a full-service FM station's protected contour. To conclude that sections 7(1) and (3) both apply to Section 7(1) Stations would run afoul of one of the cardinal rules of statutory construction—a statute should be read as a harmonious whole. We believe our conclusion that Congress has created two different interference protection and remediation regimes is the most reasonable reading of section 7 of the LCRA as a whole. It makes sense that Congress would impose more stringent interference protection and remediation obligations on stations that are located nearest to full-service FM stations and have the greatest potential to cause interference. Moreover, our reading is consistent with the general rule that, where a protection approach offers greater flexibility, that flexibility is counter-balanced by more stringent interference remediation and protection requirements. The LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counter-balances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.

15. Based on the text of section 7(1) of the LCRA, we tentatively conclude that, although section 3(a) of the LCRA mandates the elimination of the third-adjacent channel spacing requirements, we should retain them solely for purposes of reference in order to

implement that section. We seek comment on this tentative conclusion and also on whether ultimately to retain the third-adjacent channel spacing requirements in § 73.807 for purposes of reference or transfer them to another section of the rules.

16. Sections 7(4) and (5) of the LCRA establish a number of requirements related to interference protection and remediation. These range from a requirement that the Commission allow LPFM stations on third-adjacent channels to remediate interference through collocation to requirements related to what constitutes a bona fide complaint of interference. We tentatively conclude these sections apply only to Section 7(3) Stations. We seek comment on our tentative conclusion. We believe this is the most reasonable reading of these provisions. We note that these provisions use the same ''low-power FM stations on third-adjacent channels'' language as section 7(3), not the more specific ''low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements'' language set forth in section 7(1). In addition, as discussed above, section 7(1) subjects LPFM stations licensed at locations that would be considered short-spaced under third-adjacent channel spacing requirements to the interference protection and remediation regime set forth in § 74.1203 of the rules. Thus, Section 7(1) Stations must remediate any actual interference caused by their operations or go off the air; must respond to all complaints meeting the specifications set forth in § 74.1203; and, must do so in the manner described in that section. That Congress required our wholesale adoption of the well-established and comprehensive regime in § 74.1203 of the rules bolsters our tentative conclusion that sections 7(4) and 7(5), which establish discrete requirements inconsistent with the § 74.1203 regime, do not apply to Section 7(1) Stations.

17. Finally, we tentatively conclude that sections 7(1), (2), (3), (4) and (5) of the LCRA apply only to third-adjacent channel interference. While Congress did not specify the type of interference to which these provisions apply, we believe this is the most reasonable reading of them. We note that, in each of these provisions, Congress refers specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements. These references reflect a focus on those stations located on third-adjacent channels to LPFM stations and any interference caused to them, which necessarily would be third-adjacent channel interference. We believe that our conclusion is further supported by the fact that Congress separately addressed the possibility of second-adjacent channel interference in section 3 of the LCRA. We seek comment on our tentative conclusion.

b. Regime Applicable to Section 7(1) Stations

18. Section 7(1) Stations are subject to the same interference protection regime applicable to FM translator and booster stations, which is set forth in § 74.1203 of the rules. As indicated above, this regime is more stringent than that currently set forth in § 73.810. Section 74.1203(a) prohibits ''actual interference to * * * [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station. * * *'' It specifies that ''[i]nterference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by'' the interfering FM translator station. An interfering FM translator station must remedy the interference or cease operation. The rule has been interpreted broadly. It places no geographic or temporal limitation on complaints. It covers all types of interference. The reception affected can be that of a fixed or mobile receiver. The Commission also has interpreted ''direct reception by the public'' to limit actionable complaints to those that are made by bona fide listeners. Thus, it has declined to credit claims of interference or lack of interference from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant ''be 'disinterested,' e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding.'' The staff has routinely required a complainant to provide his/her name, address, location(s) at which interference occurs, and a statement that the listener is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints, the staff has considered only those complaints where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures. Accordingly, when the Commission concludes that a bona fide listener has made an actionable complaint of uncorrected interference, it will notify the station that ''interference is being caused'' and direct the station to discontinue operations. We seek comment on whether it would be appropriate to modify the regime set forth in § 74.1203 in any way in order to apply it to Section 7(1) Stations and, if so, whether we have authority to make any such changes in light of the statutory mandate to adopt ''the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in [§] 74.1203 of [the] rules.''

19. We also request comment on requiring newly constructed LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements to make the same periodic announcements required of third-adjacent channel LPFM stations that would not be considered short-spaced under section 7(2) of the LCRA. We see no reason to distinguish between listeners of stations that may experience interference as a result of the operations of Section 7(1) Stations and those that may experience interference as a result of the operations of Section 7(3) Stations for such purposes. Indeed, there will be less distance separating Section 7(1) Stations and full-service FM stations on third-adjacent channels and thus a greater potential for these stations to cause such interference, so that we believe requiring announcements would serve the public interest. We note, however, that section 7(1) explicitly requires the Commission to ''provide the same [LPFM] interference protections that FM translator stations * * * are required to provide as set forth in § 74.1203 of its rules.'' Section 74.1203 does not require an FM translator station to notify either the Commission or an affected station of an interference complaint within 48 hours of the receipt of such a complaint. Accordingly, we seek comment on whether we may impose this requirement on Section 7(1) Stations and, if so, whether we should.

c. Regime Applicable to Section 7(3) Stations

20. Section 7(3) of the LCRA requires the Commission to modify § 73.810 of the rules to require Section 7(3) Stations ''to address interference complaints within the protected contour of an affected station'' and encourage them to address all other interference complaints, including complaints ''based on interference to a full-service FM station, an FM translator station or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station or FM booster station.'' As noted above, we tentatively conclude that sections 7(2), (4) and (5) apply only to Section 7(3) Stations. We discuss the general interference remediation requirements set forth in section 7(3) and the additional provisions below.

21. *General Requirements.* Unlike section 7(1), section 7(3) does not specifically refer to § 74.1203 of the rules. We request comment on whether the more lenient interference protection obligations currently set forth in § 73.810 should continue to apply to fully-spaced LPFM stations. We note that, while section 7(1) instructs the Commission to require Section 7(1) Stations ''to provide'' interference protections, section 7(3) merely instructs the Commission to require Section 7(3) Stations ''to address'' complaints of interference. What must a Section 7(3) Station do to ''address'' a complaint of third-adjacent channel interference? Finally, we observe that section 7(3) requires the Commission to provide notice to the licensee of a Section 7(3) Station of the existence of interference within 7 calendar days of the receipt of a complaint from a listener or another station. We seek comment on whether to establish certain basic requirements for such complaints. For instance, should we require copies of such complaints to be filed with the Bureau's Audio Division? Should we require such complaints to specify the call sign of the LPFM and/or affected full-service FM, FM translator or FM booster station? Should we require the complainant to provide contact information?

22. *Periodic Broadcast Announcements.* Section 7(2) of the LCRA directs the Commission to amend § 73.810 of the rules to include certain requirements related to periodic broadcast announcements. Section 7(2) instructs the Commission to require a newly constructed Section 7(3) Station to broadcast periodic announcements that alert listeners to the potential for interference and instruct them to contact the LPFM station to report any interference. These announcements must be broadcast for a period of one year after construction. We seek comment on whether we should specify the language to be used in these announcements and, if so, what to specify. We also seek comment on whether we should mandate when and how often the announcements must be aired. We note that we have done so with respect to other required announcements and that ensuring uniformity may reduce listener confusion and provide regulatory certainty by allowing LPFM stations to be confident that they have satisfied the requirements of section 7(2).

23. Section 7(2) also directs the Commission to require newly constructed Section 7(3) Stations to notify the Commission and all affected stations on third-adjacent channels of an interference complaint by electronic communication within 48 hours of receipt of such complaint. Finally, section 7(2) mandates that we require newly constructed Section 7(3) Stations on third-adjacent channels to cooperate in addressing any such interference complaints. We seek comment on whether to specify the scope of efforts which a Section 7(3) Station must undertake, and whether to relieve newly constructed Section 7(3) Stations on third-adjacent channels of their obligations to cooperate in instances where the complainant does not reasonably cooperate with the LPFM stations' remedial efforts.

24. *Bona Fide Complaints.* Section 7(5) of the LCRA expands the universe of interference complaints which Section 7(3) Stations must remediate. Section 7(5) states:

> The Federal Communications Commission shall—(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission; (B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and (C) accept complaints of interference to mobile reception.

25. We request comment on whether any of the four criteria set forth in § 73.810(b)(1) of the rules remain relevant. We tentatively conclude that section 7(5) requires us to delete § 73.810(b)(1) (bona fide complaint must allege interference caused by LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected station), (2) (bona fide complaint must be in form of affidavit and state the nature and location of the alleged interference) and (3) (bona fide complaint must involve a fixed receiver located within the 60 dBu contour of the affected station and not more than 1 kilometer from the LPFM transmitter site). We solicit comment on whether we should retain the remaining criterion, which requires a bona fide complaint to be received within one year of the date an LPFM station commenced broadcasts.

26. *Technical Flexibility.* Section 7(4) of the LCRA requires the Commission, to the extent possible, to ''grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.'' We note that, per section 3 of the LCRA, we are eliminating the third-adjacent channel spacing requirements set forth in § 73.807. We have identified no other provision of our rules that would hinder our ability to offer the flexibility specified in section 7(4) of the LCRA. Accordingly, we tentatively conclude that we need not modify or eliminate any other provisions of our rules to implement section 7(4). We seek comment on this tentative conclusion.

d. Additional Interference Protection and Remediation Obligations

27. One additional provision of section 7—section 7(6)—requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations. Specifically, section 7(6) of the LCRA directs the Commission to create special interference protections for ''full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per square mile land area.'' The obligations apply only to LPFM stations licensed after the enactment of the LCRA. Such stations must remediate actual interference to full-service FM stations licensed to the significantly populated states specified in section 7(6) and ''located on third-adjacent, second-adjacent, first-adjacent or co-channels'' to the LPFM station and must do so under the interference and complaint procedures set forth in § 74.1203 of the rules. However, Congress has created an outer limit to the interference protection obligations in section 7(6). That outer limit is the co-channel spacing distance set forth in § 73.807 of the rules for the affected full-service station's class.

28. This statutory requirement is different than current policy. Today, if an LPFM station meets the spacing requirements, it is ''not required to eliminate interference caused to existing FM stations.'' With the enactment of LCRA, at least with respect to full-service FM stations licensed to the significantly populated states that meet the criteria set forth in section 7(6), LPFM stations licensed after its effective date must remediate any actual interference that occurs. We note that the section 7(6) interference requirements are, with one exception, unambiguous. We seek comment on how to interpret the term—''States.'' Only New Jersey and Puerto Rico satisfy the population and population density thresholds set forth in section 7(6). This raises the question of whether Congress intended the term ''States'' to include the territories and possessions of the United States.

3. Translator Input Signals Complaint Procedure

29. Section 6 of the LCRA requires the Commission to ''modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set forth in Section 2.7 of the technical report entitled 'Experimental Measurements of the Third-Adjacent Channel Impacts of Low Power FM Stations, Volume One—Final Report (May 2003)''' (''Final Report''). Section 2.7 of the Final Report finds that significant interference to translator input signals does not occur for undesired/desired ratio values below 34 dB at the translator input. Section 2.7 sets out a formula (the ''Mitre Formula'') that allows calculation of the minimum LPFM-to-translator separation that will ensure a undesired/desired ratio of 34 dB.

30. The Commission currently requires LPFM stations to remediate actual interference to the input signal of an FM translator station but has not established any minimum distance separation requirements or other preventative measures. Based on the language of section 6, which requires the Commission to ''address the potential for predicted interference,'' we tentatively conclude that our existing requirements regarding remediation of actual interference must be recast as licensing rules designed to prevent any predicted interference.

31. We propose to adopt a basic threshold test. This test is designed to closely track the interference standard developed by Mitre, without necessarily requiring LPFM applicants to obtain the receive antenna technical characteristics that are incorporated into the Mitre Formula. We propose that any application for a new or modified LPFM station construction permit may not use a transmitter site within the ''potential interference area'' of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. For these purposes, we define the ''potential interference area'' to be any area within 2 km of the translator site or any area within 10 km of the translator site within the azimuths from −30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator. For example, if the primary station is located at 280 degrees true (from the translator site), the LPFM station must not be within 10 km of the translator between the azimuths 250 to 310 degrees true (from the translator site), and must be at least 2 km from the translator tower site in all other directions. If an LPFM application proposes a transmitter site within the potential interference area and fails to include an exhibit demonstrating lack of interference to the off-air reception, we would dismiss the application as defective.

32. We propose two ways for an LPFM applicant within the potential interference area to show lack of interference to the input signal of a potentially affected translator. First, we propose, as indicated in section 2.7 of the Final Report, that LPFM applicants may show that the ratio of the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) station is below 34 dB at all locations. Second, we propose to allow use of the equation provided in Section 2.7 of the Final Report to demonstrate lack of interference to the reception of the FM station at the translator transmitter site. Because we do not authorize translator receive antenna locations, we propose to assume that the translator receive antenna is co-located with its associated translator transmit antenna. In addition, this equation would require the horizontal plane pattern of the translator's receive antenna. This information is not typically available publicly or in the Consolidated Database System (''CDBS''). Therefore, we propose to allow the use of a ''typical'' pattern in situations where an LPFM applicant is not able to obtain information from the translator licensee, despite reasonable efforts to do so. We seek comment on this proposal.

33. As with similar situations involving dismissals for violation of interference protection requirements, we propose to permit LPFM applicants to seek reconsideration of a dismissal and reinstatement nunc pro tunc by demonstrating that their proposals will not cause any actual interference to the input signal of any FM translator station using either the ratio or the Mitre Formula. Furthermore, we seek comment on whether this process should be applicable to only translators receiving FM station signals, or also include those that receive third-adjacent channel translator signals directly off-air.

B. Other Rule Changes

34. In this *Fourth FNPRM,* we also propose changes to our rules intended to promote the LPFM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. We discuss these proposed changes below. We seek comment on whether these proposed changes are consistent with the LCRA and whether they will promote the public interest.

1. Classes of Service

35. There are two classes of LPFM facilities: LP100 and LP10. The Commission permits LP100 stations to operate with a maximum power of 100 watts ERP at 30 meters HAAT. LP10 stations may operate with a maximum power of 10 watts ERP at 30 meters HAAT. To date, the Commission has issued construction permits and licenses only for LP100 class facilities. Accordingly, we seek comment on whether to eliminate the LP10 class of service.

36. In addition, we seek comment on whether to permit LPFM stations in smaller communities, rural areas or ''non-core'' locations (i.e., areas outside population centers) in larger markets to increase power levels to a maximum ERP of 250 watts at 30 meters HAAT, as urged by both the Amherst Alliance (''Amherst'') and the Catholic Radio Association (''CRA''). Both Amherst and CRA support permitting LPFM stations to operate with up to 250 watts ERP. They focus on the particular challenges of maintaining economically viable LPFM stations in rural areas where population densities are low and larger coverage areas are possible.

37. We seek comment on whether increased power levels could offset limited potential audiences, promote LPFM station viability and expand radio service to areas where full service operations may not be economically feasible. Such an approach would be consistent with the Commission's decision to adopt a more flexible definition of ''local'' applicant in non-urban areas. We note that this potential revised maximum operating limit would put LPFM stations on similar footing to FM translator stations which may operate with a maximum power of 250 watts ERP.

38. We seek comment on whether establishing a higher power level for certain LPFM stations would allow these stations to better meet the needs of their local communities. Notwithstanding the potential service benefits, we also seek comment on whether an increase in the maximum LPFM power level can be implemented in a manner that would not undermine the detailed LCRA protection standards and interference remediation procedures, which are presumably grounded on the current LPFM maximum power level. Such an increase in power for certain LPFM stations may be possible as we will be maintaining or increasing the spacing requirements, not decreasing them. We also seek comment

on appropriate geographical restrictions for the higher powered LPFM operations. For example, should we permit increased power levels anywhere outside the top 100 markets and limit higher powered operations in the top 20 markets to transmitter locations more than thirty kilometers from the center city coordinates, in markets 21–50, to locations more than twenty kilometers from center city coordinates and in markets 51–100, to locations more than ten kilometers from center city coordinates. Alternatively, we seek comment on whether power limit increases should not be permitted anywhere in the top 50 markets where we believe that licensing opportunities to be limited because of spectrum constraints and where there may be population centers outside core market locations. We ask that commenters address whether we should limit eligibility to operate in excess of the current 100 watts/30 meters maximum to previously licensed LPFM facilities in order to provide those LPFM licensees that have demonstrated their ability to construct and operate a limited opportunity to expand their listenership. Finally, we ask that commenters address whether increasing the maximum LPFM power level could result in an increased potential for interference. Specifically, should eligibility to increase power to 250 watts be limited to only those stations that can fully satisfy co-, first-, and second-adjacent channel spacing requirements?

2. Removal of I.F. Channel Minimum Distance Separation Requirements

39. LPFM stations are currently required to protect full-service stations on their intermediate frequencies (''I.F.''), while translator stations operating with less than 100 watts ERP are not. We recognize this disparity and propose to remove I.F. protection requirements for LPFM stations operating with less than 100 watts. We believe the same reasoning that the Commission applied in exempting FM translator stations operating with less than 100 watts ERP from the I.F. protection requirements applies for LPFM stations operating at less than 100 watts ERP. These stations too are the equivalent of Class D FM stations, which are not subject to I.F. protection requirements. We note that FM allotments would continue to be protected on the I.F. channels based on existing international agreements. We seek comment on this proposal.

3. Eligibility and Ownership

a. Requirement That Applicant Be Community-Based

40. The LPFM service is reserved solely to non-profit, community-based entities. However, we believe that the wording of § 73.853 of the rules is unclear and could be read to require that an applicant be ''local'' only at the time of application. Such a reading would contravene our intent in adopting—and reinstating—the local ownership requirement, which rested on our predictive judgment that ''local entities with their roots in the community will be more attuned and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters.'' We therefore propose to clarify this requirement by revising § 73.853(b) to read: ''Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter. * * *'' We seek comment on this proposed requirement.

b. Eligibility of Native Nations

41. The current version of § 73.853 of the rules does not include federally recognized American Indian Tribes and Alaska Native Villages (''Native Nations''), consortia of Native Nations, or entities majority owned by Native Nations or consortia, among the categories of eligible applicants for stations in the LPFM service. We have recently expressed our commitment to assisting Native Nations in establishing radio service to their members living on tribal lands, including a Tribal Priority that we incorporated into the threshold fair distribution analysis performed pursuant to section 307(b) of the Communications Act of 1934, as amended (''Act''), when comparing mutually exclusive applications for permits to construct new or modified full-service NCE FM stations that propose service to different communities. In keeping with this commitment, we seek comment in this *Fourth FNPRM,* inter alia, on whether to modify the LPFM point system to award a point to a Native Nation proposing LPFM service to its community. However, before we seek comment on Native Nation participation in LPFM application proceedings, we must first ensure that, under our rules, Native Nations are eligible to apply for stations in the LPFM service.

42. Accordingly, we propose to revise § 73.853(a) of the rules by adding the following: ''(3) Tribal Applicants, as defined in [§] 73.7000 of this [p]art, that will provide non-commercial radio services.'' We further propose to revise § 73.853(b) of the rules by adding the following: ''(4) In the case of a Tribal Applicant, as defined in [§]73.7000 of this [p]art, the proposed site for the transmitting antenna is located on that Tribal Applicant's 'Tribal Lands,' as defined in [§] 73.7000 of this [p]art.'' We believe that allowing Native Nations to hold LPFM licenses will be consistent with the localism and diversity goals of the LPFM service and will further our goal of assisting Native Nations in establishing radio service to their members on tribal lands.

c. Cross-Ownership

43. From the outset, the Commission has prohibited common ownership of an LPFM station and any other broadcast station, as well as other media subject to the Commission's ownership rules. This prohibition furthers one of the most important purposes of establishing the LPFM service—''to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership.'' We seek comment on whether to revise our rules to permit cross-ownership of an LPFM station and an FM translator or translators. We note that this revision could enable LPFM stations to expand their listenership and provide another way in which translators could serve the needs of a community. We do not believe allowing limited cross-ownership of LPFM stations and FM translators will have a negative effect on the diversity of ownership. However, we solicit comment on this issue. In addition, we request comment on how cross-ownership of an LPFM station and an FM translator station would impact the extremely localized service that LPFM stations provide. Finally, we solicit input on whether to authorize such cross-ownership only if the FM translator rebroadcasts the programming of its co-owned LPFM station; whether we should require some overlap of the 60 dBu contours of the cross-owned stations; whether to set some distance or geographic limits on the cross-ownership; and whether to permit an LPFM station to use an alternative signal delivery mechanism to deliver its signal to a commonly owned FM translator.

44. We also seek comment on whether to modify our cross-ownership rule to permit a full-service radio station permittee or licensee that is a Native

Nation or an entity owned or controlled by a Native Nation to apply for an LPFM station and to hold an attributable interest in such station. We believe this modification would enhance the ability of Native Nations to provide communications services to their members on tribal lands without significantly undermining diversity of ownership. We seek comment on whether this exception to the general cross-ownership prohibition should be limited to situations where the Native Nation or Native Nation-controlled applicant demonstrates that it will serve currently unserved tribal lands or populations.

d. Multiple Ownership

45. To further its diversity goals and foster local, community-based service, the Commission prohibits entities from owning more than one LPFM station in the same community. We seek comment on whether we should permit Native Nations and entities owned or controlled by Native Nations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. For instance, we could permit this when Native Nations and entities owned or controlled by Native Nations seek to serve large, irregularly shaped or rural areas. Where this is the case, an applicant may be unable to ensure adequate coverage of tribal members and tribal lands with one LPFM station. We also could permit multiple ownership only when there are available channels for other applicants. In such instances, there would be no risk that a new entrant would be precluded from offering service. We believe permitting Native Nations to hold more than one LPFM license would advance the Commission's efforts to enhance the ability of Native Nations not only to receive radio service tailored to their specific needs and cultures, but to increase ownership of such radio stations by Native Nations and entities owned or controlled by Native Nations. We seek comment on whether to accomplish this through amendment of § 73.855(a) of the rules or through waiver.

4. Selection Among Mutually Exclusive Applicants

46. Below, we propose certain changes to the manner in which we process mutually exclusive LPFM applications. These changes are intended to better ensure that we award LPFM licenses to those organizations most capable of serving the very localized communities and underrepresented groups the LPFM service was designed to serve, and to improve the efficiency of the selection process.

a. Point System

(i) Established Community Presence

47. Currently, under the LPFM selection procedures for mutually exclusive LPFM applications set forth in § 73.872 of the rules, the Commission awards one point to an applicant that has an established community presence. The Commission deems an applicant to have such a presence if, for at least two years prior to application filing, the applicant has been headquartered, has maintained a campus or has had three-quarters of its board members residing within ten miles of the proposed station's transmitter site. In adopting this criterion, the Commission intended to ''favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have 'track records' of community-service and established constituencies in their communities.'' The Commission believed that, because of their longstanding organizational ties to their communities, applicants with established community presences were likely to be ''more attuned to, and have organizational experience addressing, the needs and interests of their communities.''

48. We propose to revise the language of § 73.872(b)(1) to clarify that an applicant must have had an established local presence for a specified period of time prior to filing its application and must maintain that local presence at all times thereafter. We note that, while Section 73.872(b)(1) currently does not include the requirement that an applicant maintain its local presence, we believe that is the only reasonable interpretation of the rule. We seek comment on this proposed change to § 73.872(b)(1).

49. In addition, we seek comment on three additional changes to the rule. First, we request comment on whether to revise our definition of ''established community presence'' to require that an applicant have maintained such a presence for a longer period of time, such as four years. While this change in the rules would result in a smaller pool of organizations that could earn this comparative point, we believe it would better ensure that LPFM licensees are attuned to the local interests of the communities they seek to serve. Alternatively, should we maintain the two-year threshold but also award an additional point to applicants that have a substantially longer established community presence (e.g., four years)? Second, we solicit comment on whether we should modify § 73.872(b)(1) to extend the ''established community presence'' standard to 20 miles in rural areas. We note that such a change would bring § 73.872(b)(1) in line with § 73.853(b). Finally, we seek comment on whether to allow local organizations filing as consortia to receive one point under the established community presence criterion for each organization that qualifies for such a point. If we were to revise § 73.872(b)(1) in this fashion, should we cap the number of points awarded to consortia at three? We note that, currently, applicants tied with the highest number of points may enter into time-share agreements. In such a situation, their points are aggregated. This proposal would operate in a similar fashion, except that it would precede and potentially preclude post-filing point aggregation settlements. We believe this proposed change could significantly promote diversity, speed the licensing process and provide further incentive for applicants to enter into voluntary time-sharing arrangements in spectrum-limited areas. However, we seek comment on whether there is any potential for abuse of such a change in the rules and, if so, how we can prevent it. For instance, could this proposed rule change lead local organizations interested in constructing and operating an LPFM station to recruit other local organizations that have no interest in doing so to participate in a consortium in order to inflate the consortium's point total?

(ii) Local Program Origination

50. The Commission currently encourages LPFM stations to locally originate programming. It does so by incorporating local program origination as one of the three one-point criteria used to select among mutually exclusive applicants. In adopting the local program origination criterion, the Commission reasoned that ''local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented radio broadcasting'' and concluded that ''an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.'' We seek comment on whether to place greater emphasis on this selection factor by awarding two points—instead of the one point currently awarded—to an applicant that pledges to originate at least eight hours of programming each day. Do the limited licensing opportunities for LPFM stations in major markets support giving greater weight to this criterion? Does the

potential for awarding up to three points to a consortium under the established community presence criterion justify an increase in the points awarded under this criterion? Should we modify the definition of local program origination for LPFM stations that serve rural areas? We request that commenters specifically address whether increasing the weight of this criterion is warranted in light of our previous finding that local programming is not the only programming of interest or value to listeners in a particular locale. Alternately, should we impose a specific requirement that all new LPFM licensees provide locally-originated programming? Parties supporting this proposal are requested to show that the Commission's prior finding is no longer valid and identify problems or shortcomings in the current LPFM licensing and service rules that this change would remedy. Parties supporting this proposal also are requested to address any constitutional issues that it raises.

(iii) Additional Selection Criteria

51. We seek comment on whether to develop additional selection criteria for the LPFM point system in order to limit the number of involuntary time-share licensing outcomes. Specifically, we seek comment on whether we should modify our point system to award a point to Native Nations and entities owned or controlled by Native Nations, when they propose to provide LPFM service to Native Nation communities. We note that this criterion would be similar to the ''Tribal Priority'' that we incorporated into the threshold fair distribution analysis that we perform pursuant to Section 307(b) of the Act, when we are faced with mutually exclusive applications for permits to construct new or modified full-service FM, AM, or NCE FM stations that propose service to different communities. We also note that we believe adoption of a Native Nation selection criterion would further our efforts to increase ownership of radio stations by Native Nations and entities owned or controlled by Native Nations and to enable Native Nations and such entities to serve the unique needs and interests of their communities. Finally, in addition to seeking comment on this ''Native Nation'' criterion, we invite the submission of additional proposals for new selection criteria, provided they are (a) specifically linked to Commission policy, and (b) structured to withstand scrutiny under applicable legal standards.

b. First Tiebreaker, Voluntary Time Sharing

52. In the event the point analysis results in a tie, the Commission employs voluntary time-sharing as the initial tie-breaker. In these circumstances, the Commission releases a public notice announcing the tie and gives the tied applicants the opportunity to propose voluntary time-sharing arrangements. Currently, following the award of voluntary time-share construction permits, if one of the participants in a voluntary time-sharing arrangement does not construct or surrenders its station license after commencing operations, the remaining time-share participants are free to apportion the vacant air-time as they see fit. We seek comment on the procedures we should adopt to address the surrender or expiration of a construction permit—or the surrender of a license—issued to a participant in a voluntary time-sharing arrangement. We note that the current policy regarding air-time reapportionment presents the potential for abuse in the LPFM licensing process. For instance, out of a group of tied mutually exclusive applicants, some could enter into a time-share arrangement in order to aggregate their points and prevail over others with the knowledge that not all of the prevailing applicants intend to build and operate their LPFM stations. We solicit comment on ways to reduce the potential for abuse of the air-time reapportionment policy. Should we open a ''mini-window'' for the filing of applications for the abandoned air-time? Could we limit eligibility to unsuccessful applicants from the same mutually exclusive group in the initial window? Is such an approach consistent with *Ashbacker* requirements? We believe limiting the applicant pool for a ''mini-window'' to unsuccessful applications from the same mutually exclusive group will provide organizations with an incentive to participate in the LPFM licensing process at the earliest opportunity (i.e., during the initial filing window). It also will expedite the filling of dead air-time and promote the goal of reducing the potential for abuse of the air-time reapportionment policy while minimizing the administrative complexities involved. In this regard, we believe that the procedures we develop to select successor permittees and licensees must operate efficiently. The air-time being filled will cover only a limited portion of each broadcast day. We must balance our desire to fill air-time with the need for administrative efficiency, particularly as we anticipate the considerable licensing burdens that are likely to result from the upcoming LPFM window. Under another approach, a non-prevailing applicant could express its interest in being selected as a successor time share permittee in the event that the tentatively selected applications are granted and either a permittee fails to construct or a licensee abandons its time. One option would be to require the filing of such expressions of interest by the deadline for filing of petitions to deny the applications of the tentative selectees. The staff then could identify the applicant with the highest point total among those filing an expression of interest and retain this application in pending status. If we modify our air-time reapportionment policy in voluntary time sharing situations to reduce the potential for abuse, we propose that the changes would apply only during the first four years of licensed station operations, as they do in the NCE FM licensing context. If a time share licensee abandons its air-time after the first four years of licensed station operations, we propose to allow the remaining time-share participants to apportion the vacant air-time as they see fit just as they do under the current air-time reapportionment policy. We seek comment on these proposals. Finally, we seek comment on whether, if we modify the established community presence criterion to award additional points to consortia, these new procedures also should apply to permits awarded under this modified criterion.

5. Operating Schedule, Time Sharing

53. Currently, the Commission requires LPFM stations to meet the same minimum operating hour requirements as full-service NCE FM stations. Like NCE FM stations, LPFM stations must operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week. However, while the Commission has mandated time sharing for NCE FM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year, it has not done so for LPFM stations. We seek comment on whether we should extend this mandatory time-sharing to the LPFM service. We believe that doing so could increase the number of broadcast voices and promote additional diversity in radio voices and program services.

III. Administrative Matters

A. Filing Requirements

54. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Initial Regulatory Flexibility Analysis

55. The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

56. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Fourth Further Notice of Proposed Rulemaking* (''*Fourth FNPRM''*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth FNPRM* provided in paragraph 74. The Commission will send a copy of this entire *Fourth FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *Fourth FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

57. *Need for, and Objectives of, the Proposed Rules.* This rulemaking proceeding is initiated to seek comment on how to implement the provisions of the Local Community Radio Act of 2010 (''LCRA'') discussed below. The *Fourth FNPRM* tentatively concludes that the second-adjacent channel spacing waiver standard set forth in section 3(b)(2) of the LCRA supersedes the interim waiver processing policy currently in place and seeks comment on this tentative conclusion and on what factors the Commission should take into account in considering waiver requests. The *Fourth FNPRM* also proposes to implement section 3(b)(2)(B), which provides a framework for handling complaints of interference from low-power FM (''LPFM'') stations operating pursuant to second-adjacent channel waivers. Similarly the *Fourth FNPRM* also proposes to amend the Commission's rules to implement section 7 of the LCRA, which creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements, and one for LPFM stations that would not be considered short-spaced under those requirements. Lastly, the *Fourth FNPRM* takes up implementation of section 6 of the LCRA, which requires the Commission to modify its rules to address the potential for predicted interference to translator input signals on third-adjacent channels. The *Fourth FNPRM* proposes to adopt a basic threshold test to determine whether a proposed LPFM station will cause such predicted interference. Specifically, the *Fourth FNPRM* proposes to prohibit an applicant for a new or modified LPFM station construction permit from specifying a transmitter site within the ''potential interference area'' of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. The *Fourth FNPRM* would define the ''potential interference area'' to be any area within 2 km of the translator site or any area within 10 km of the translator site within the azimuths from −30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator.

58. The *Fourth FNPRM* also proposes changes to our rules intended to promote the LPFM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. First, the *Fourth FNPRM* seeks comment on whether to increase the maximum facilities for LPFM stations. Second, the *Fourth FNPRM* seeks comment on proposed rule changes that will clarify that an LPFM applicant must satisfy the local ownership requirement at all times. Third, it also requests comment on whether to allow cross-ownership of an LPFM station and FM translator stations and whether to allow federally recognized Native American Tribes and Alaska Native Villages (''Native Nations'') to own multiple LPFM stations. Fourth, the *Fourth FNPRM* proposes to modify the criteria used in the point system, add an additional criterion to the point system, and revise the voluntary time-sharing tie-breaker used for selecting among mutually exclusive LPFM applications when the point analysis results in a tie. Fifth, the *Fourth FNPRM* seeks comment on whether to extend to the LPFM service the mandatory time-sharing requirements that currently apply to FM translators that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year. Finally, noting that LPFM stations are currently required to protect full-service stations on their intermediate frequencies (''I.F.''), while translator stations operating with less than 100 watts ERP are not, the *Fourth FNPRM* proposes to eliminate the spacing requirements related to Intermediate Frequency channels.

59. *Legal Basis.* The authority for this proposed rulemaking is contained in the

Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j).

60. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small Business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. *Radio Broadcasting.* The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of September 15, 2011, about 10,960 (97 percent) of 11,300 commercial radio station have revenues of $7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

62. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

63. *FM translator stations and low power FM stations.* The proposed policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Currently, there are approximately 6,131 licensed FM translator stations and 859 licensed LPFM stations. In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

64. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* None.

65. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

66. The passage of the LCRA required the Commission to propose certain changes to its technical rules. The Commission considered maintaining the *status quo* regarding the proposed changes to its non-technical rules, but concluded that these proposed rule changes will benefit small businesses and existing LPFM licensees.

67. The LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that rules proposed in the *Fourth FNPRM* would impose any burdens on small entities, we believe that the resulting impact on small entities would be favorable because the proposed rules, if adopted, would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air. Among other things, the *Fourth FNPRM* proposes to allow FM translator licensees to own or hold attributable interests in LPFM stations. This is prohibited under the current rules. Likewise, the *Fourth FNPRM* proposes to permit Native Nations and entities owned or controlled by Native Nations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. Today, multiple ownership of LPFM stations is prohibited.

68. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

IV. Ordering Clauses

69. Accordingly, *It is ordered,* pursuant to the authority contained in the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, and 309(j), that this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration* is adopted.

70. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Revise § 73.807 to read as follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP250 and LP100 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. Except as noted below, an LPFM station will not be authorized unless the co-channel, first- and second-adjacent and I.F. channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. These third-adjacent channel separations are included for informational purposes only.

Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and intermediate frequency (I.F.) channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	24	24	14	14	(1)	(1)
LP250	26	29	15	16	(1)	(1)
D	24	24	13	13	6	3
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C0	122	193	111	130	84	22
C	130	203	120	142	93	28

(1) None.

(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(3) An LP250 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP250 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	29	26	16	15	(1)	(1)
LP250	31	31	17	17	(1)	(1)
D	29	26	16	15	7	3
A	67	92	56	56	30	6
B1	87	119	74	74	47	9
B	112	143	97	97	68	12
C3	78	119	67	67	41	9
C2	91	143	80	84	54	12
C1	111	178	100	111	74	20
C0	122	193	111	130	85	22
C	130	203	120	142	94	28

(1) None.

(4) LP250 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(3) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(5) LP100 stations operating with less than 100 watts effective radiated power (ERP) need not satisfy the I.F. channel minimum separations requirements.

(b)(1) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP100 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP250 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	43	9
B1	95	128	82	82	54	11
B	138	179	123	123	93	19

(3) LP 100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

Note to paragraphs (a) and (b): Minimum distance separations towards ''grandfathered'' superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(c)(1) In addition to meeting the separations specified in paragraphs (a) and (b), LP100 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period.

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km)—10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km	32	51	21	26	14	5
7.3 km or less	26	30	15	16	8	5

(2) In addition to meeting the separations specified in paragraphs (a) and (b), LP250 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km)—10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater	44	67	30	37	22	4
Greater than 7.3 km, but less than 13.3 km	37	51	23	27	15	4
7.3 km or less	31	30	17	18	9	3

(3) LP100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

(d) Existing LP250 and LP100 stations which do not meet the separations in paragraphs (a) through (c) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

(e) Commercial and noncommercial educational stations authorized under subparts B and C of this part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(f) International considerations within the border zones.

(1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	124	108	99	98	28

(2) Within 320 km of the Canadian border, LP250 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	54	33	22	20	4
A	74	53	42	40	6
B1	86	65	54	52	9
B	101	79	68	67	12
C1	122	101	90	88	19
C	132	111	100	98	26

(3) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second- and third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	27	17	9	3
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

(4) Within 320 km of the Mexican border, LP250 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second- and third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	33	19	10	3
A	48	34	26	6
AA	52	38	30	6
B1	73	57	46	9
B	101	79	68	12
C1	96	83	74	19
C	116	102	93	26

(5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

3. Section 73.809 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.809 Interference protection to full service FM stations.

(a) If a full service commercial or NCE FM facility application is filed subsequent to the filing of an LPFM station facility application, such full service station is protected against any condition of interference to the direct reception of its signal that is caused by such LPFM station operating on the same channel or first-adjacent channel and is protected from any condition of interference to the direct reception of its signal caused by such LPFM station operating on an intermediate frequency (IF) channel with more than 100 watts ERP, provided that the interference is predicted to occur and actually occurs within:

* * * * *

4. Revise § 73.811 to read as follows:

§ 73.811 LPFM power and antenna height requirements.

(a) LP250 stations:

(1) *Maximum facilities.* LP250 stations will be authorized to operate with maximum facilities of 250 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP250 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 7.1 kilometers. In no event will an ERP less than one watt be authorized.

(2) *Minimum facilities.* LP250 stations may not operate with facilities less than 101 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 5.7 kilometers.

(b) LP100 stations:

(1) *Maximum facilities.* LP100 stations will be authorized to operate with maximum facilities of 100 watts ERP at 30 meters HAAT. An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.

(2) *Minimum facilities.* LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

5. Section 73.816 is amended by revising paragraph (c) to read as follows:

§ 73.816 Antennas.

* * * * *

(c)(1) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e., antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(2) LPFM permittees and licensees may utilize directional antennas for the purpose of preventing interference to a second-adjacent channel station when requesting a waiver of the second-adjacent channel minimum distance separations set forth in § 73.807.

* * * * *

6. Revise § 73.825 to read as follows:

§ 73.825 Protection to reception of TV channel 6.

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel No.	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	140	143
202	138	141
203	137	139
204	136	138
205	135	136
206	133	135
207	133	133
208	133	133
209	133	133
210	133	133
211	133	133
212	132	133
213	132	133
214	132	132
215	131	132
216	131	132
217	131	132
218	131	131
219	130	131
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel No.	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	98	101
202	97	99
203	95	97
204	94	96
205	93	94

FM channel No.	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
206	91	93
207	91	92
208	91	92
209	91	92
210	91	92
211	91	92
212	90	91
213	90	91
214	90	91
215	90	90
216	89	90
217	89	90
218	89	89
219	89	89
220	89	89

7. Section 73.827 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding new paragraph (a) to read as follows:

§ 73.827 Interference to the input signals of FM translator or FM booster stations.

(a) Interference to the direct reception of FM signals at a translator input. An LPFM station will not be authorized unless it remains at least 2 km from a translator receiving a third-adjacent channel FM station (as compared to the LPFM) directly off-air, and unless it remains at least 10 km from the translator site within the azimuths from −30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator. The provisions of this subsection will not apply if it can be demonstrated that no actual interference will occur due to an undesired (LPFM) to desired (FM) ratio below 34 dB at all locations, or due to a location at a distance from the translator that satisfies the following: $d_u = 133.5$ antilog $[(P_{eu} + G_{ru} - G_{rd} - E_d)/20]$, where d_u = the minimum allowed separation in km, P_{eu} = LPFM ERP in dBW, G_{ru} = gain (dBd) of the translator receive antenna in the direction of the LPFM site, G_{rd} = gain (dBd) of the translator receive antenna in the direction of the FM site, E_d = predicted field strength (dBu) of the FM station at the translator site.

* * * * *

8. Section 73.850 is amended by adding paragraph (c) to read as follows:

§ 73.850 Operating schedule.

* * * * *

(c) All LPFM stations, including those meeting the requirements of paragraph (b) of this section, but which do not operate 12 hours per day each day of the year, will be required to share use of the frequency upon the grant of an appropriate application proposing such share time arrangement. Such applications must set forth the intent to share time and must be filed in the same manner as are applications for new stations. They may be filed at any time, but in cases where the parties are unable to agree on time sharing, action on the application will be taken only in connection with a renewal application for the existing station filed on or after June 1, 2019. In order to be considered for this purpose, such an application to share time must be filed no later than the deadline for filing petitions to deny the renewal application of the existing licensee.

(1) The licensee and the prospective licensee(s) shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement must be in writing and must set forth which licensee is to operate on each of the hours of the day throughout the year. Such agreement must not include simultaneous operation of the stations. Each licensee must file the same in triplicate with each application to the Commission for initial construction permit or renewal of license. Such written agreements shall become part of the terms of each station's license.

(2) The Commission desires to facilitate the reaching of agreements on time sharing. However, if the licensees of stations authorized to share time are unable to agree on a division of time, the prospective licensee(s) must submit a statement with the Commission to that effect filed with the application(s) proposing time sharing.

(3) After receipt of the type of application(s) described in subsection (c)(2), the Commission will process such application(s) pursuant to §§ 73.3561 through 73.3568 of this part. If any such application is not dismissed pursuant to those provisions, the Commission will issue a notice to the parties proposing a time-sharing arrangement and a grant of the time-sharing application(s). The licensee may protest the proposed action, the prospective licensee(s) may oppose the protest and/or the proposed action, and the licensee may reply within the time limits delineated in the notice. All such pleadings must satisfy the requirements of section 309(d) of the Act. Based on those pleadings and the requirements of section 309 of the Act, the Commission will then act on the time-sharing application(s) and the licensee's renewal application.

(4) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Division, Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau.

9. Section 73.853 is amended by adding paragraph (a)(3), revising paragraph (b) introductory text and adding paragraphs (b)(4) and (c) to read as follows:

§ 73.853 Licensing requirements and service.

(a) * * *

(3) Tribal Applicants, as defined in § 73.7000 of this part, that will provide non-commercial radio services.

(b) Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter.

* * * * *

(4) In the case of a Tribal Applicant, as defined in § 73.7000 of this part, the proposed site for the transmitting antenna is located on that Tribal Applicant's ''Tribal Lands,'' as defined in § 73.7000 of this part.

(c) An LP250 station will be licensed only to applicants that:

(1) Propose transmitter sites located at least 30 kilometers from the reference coordinates for the top 100 radio markets; and (2) currently operate an LP100 station serving the community of license proposed to be served by the LP250 station.

10. Section 73.870 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LP250 station authorized under this subpart is limited to transmitter site relocations of 7.1 kilometers or less. A minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs

(c) and (e). Minor changes of LPFM stations may include:

* * * * *

11. Section 73.871 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) * * * (1) Filings subject to paragraph (c)(5) of this section, site relocations of 5.6 kilometers or less for LP100 stations;

(2) Filings subject to paragraph (c)(5) of this section, site relocations of 7.1 kilometers or less for LP250 stations;

* * * * *

12. Section 73.872 is amended by revising paragraphs (b) introductory text and (b)(1), and adding paragraph (b)(4) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(b) Except as specified in paragraph (b)(1) below, each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) Established community presence. An applicant must, for a period of at least 4 years prior to application and at all times thereafter, have been physically headquartered, have had a campus or have had seventy-five percent of its board members residing within 16.1 km (10 miles) of the coordinates of the proposed transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets. If an applicant does not satisfy the requirements of the preceding sentence but was formed jointly by two or more organizations that do meet such requirements and maintains representation on its governing board by at least one member from each such organization, that applicant will be awarded one point for each such formative organization. Applicants claiming a point or more for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

* * * * *

(4) Tribal applicants serving Tribal Lands. The applicant must be a Tribal Applicant, as defined in § 73.7000 of this part, and the proposed site for the transmitting antenna must be located on that Tribal Applicant's ''Tribal Lands,'' as defined in § 73.7000 of this part.

* * * * *

[FR Doc. 2012–8239 Filed 4–5–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

RIN 0648–XZ59

Endangered and Threatened Species; Proposed Threatened Status for Subspecies of the Ringed Seal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of availability and opening of comment period.

SUMMARY: NMFS has conducted special independent peer review of the December 2010 status review report of the ringed seal (*Phoca hispida*) under the Endangered Species Act of 1973, as amended (ESA). This notice announces availability of a peer review report that consolidates the comments received from the reviewers and the opening of a 30-day public comment period on that report. Please note that comments previously submitted need not be resubmitted since they are already part of the record and will be considered when NMFS makes its final determination.

DATES: Comments and information must be received by May 7, 2012.

ADDRESSES: Send comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2010–0258, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0258 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

Mail: Submit written comments to P.O. Box 21668, Juneau, AK 99802.

Fax: (907) 586–7557.

Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

For information on obtaining a copy of the peer review report, see the ''Obtaining a Copy of the Peer Review Report'' section below.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2010, NMFS made a 12-month petition finding and proposed to list the Arctic (*Phoca hispida hispida*), Baltic (*Phoca hispida botnica*), Okhotsk (*Phoca hispida ochotensis*), and Ladoga (*Phoca hispida ladogensis*) subspecies of ringed seals as threatened (75 FR 77476). On December 13, 2011, in consideration of substantial disagreement regarding the sufficiency or accuracy of the model projections and analysis of future sea ice habitat, in particular snow cover, for Arctic ringed seals, NMFS announced a 6-month extension of the deadline for the final listing determination to June 10, 2012 (FR 77466). At that time, we also announced that we were conducting special independent peer review of the sections of the status review report of the ringed seal (Kelly *et al.,* 2010) related to the disagreement, and that the resulting peer review report would be made available for public comment.

We have conducted this special peer review, and are notifying the public of

the availability of a peer review report that consolidates the comments received. We are also providing the public an opportunity to submit comments or information on the peer review report for 30 days. The comment period shall be limited to 30 days because the statutory deadline requires a final listing determination by June 10, 2012.

Obtaining a Copy of the Peer Review Report

You may obtain a copy of the peer review report for review:

Via the Federal eRulemaking Portal *http://www.regulations.gov* at Docket No. NOAA–NMFS–2010–0258.

By visiting the Internet at: *http://alaskafisheries.noaa.gov/protectedresources/seals/ice.htm.*

Documents cited in this notice, including the peer review report, may also be viewed, by appointment, during regular business hours, at the aforementioned address in Juneau, AK (see **ADDRESSES**).

Public Comments Solicited

Comments and information submitted during the initial comment period on the December 10, 2011 (75 FR 77476), proposed rule should not be resubmitted since they are already part of the record. Comments and information submitted should focus on the information contained in the peer review report listed above. Our final determination of whether Arctic, Okhotsk, Baltic, and Ladoga ringed seals qualify as threatened or endangered under the ESA will take into consideration all comments and information we receive and have previously received during both comment periods. We request that all comments and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please submit any comments to the **ADDRESSES** listed above.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 2, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–8371 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

RIN 0648–XZ58

Endangered and Threatened Species; Proposed Threatened Status for Distinct Population Segments of the Bearded Seal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of availability and opening of comment period.

SUMMARY: NMFS has conducted special independent peer review of the December 2010 status review report of the bearded seal (*Erignathus barbatus*) under the Endangered Species Act, as amended (ESA). This notice announces availability of a peer review report that consolidates the comments received from the reviewers and the opening of a 30-day public comment period on that report. Please note that comments previously submitted need not be resubmitted since they are already part of the record and will be considered when NMFS makes its final determination.

DATES: Comments and information must be received by May 7, 2012.

ADDRESSES: Send comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2010–0259, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0259 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

Mail: Submit written comments to P.O. Box 21668, Juneau, AK 99802.

Fax: (907) 586–7557.

Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

For information on obtaining a copy of the peer review report, see the ''Obtaining a Copy of the Peer Review Report'' section below.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2010, NMFS made a 12-month petition finding and proposed to list the Beringia DPS and the Okhotsk DPS of the *Erignathus barbatus nauticus* subspecies of bearded seals as threatened (75 FR 77496). On December 13, 2011, in consideration of substantial disagreement regarding the sufficiency or accuracy of the model projections and analysis of future sea ice habitat in the range of the Beringia DPS of bearded seals, NMFS announced a 6-month extension of the deadline for the final listing determination to June 10, 2012 (76 FR 77465). At that time, we also announced that we were conducting special independent peer review of the sections of the status review report of the bearded seal (Cameron *et al.,* 2010) related to the disagreement, and that the resulting peer review report would be made available for public comment.

We have conducted this special peer review, and are notifying the public of the availability of a peer review report that consolidates the comments received. We are also providing the public an opportunity to submit comments or information on the peer review report for 30 days. The comment

period shall be limited to 30 days because the statutory deadline requires a final listing determination by June 10, 2012.

Obtaining a Copy of the Peer Review Report

You may obtain a copy of the peer review report for review:

Via the Federal eRulemaking Portal *http://www.regulations.gov* at Docket No. NOAA–NMFS–2010–0259.

By visiting the Internet at: *http://alaskafisheries.noaa.gov/protectedresources/seals/ice.htm.*

Documents cited in this notice, including the peer review report, may also be viewed, by appointment, during regular business hours, at the aforementioned address in Juneau, AK (see **ADDRESSES**).

Public Comments Solicited

Comments and information submitted during the initial comment period on the December 10, 2011 (75 FR 77496), proposed rule should not be resubmitted since they are already part of the record. Comments and information submitted should focus on the information contained in the peer review report listed above. Our final determination of whether the Beringia and Okhotsk DPSs of bearded seals qualify as threatened or endangered under the ESA will take into consideration all comments and information we receive and have previously received during both comment periods. We request that all comments and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please submit any comments to the **ADDRESSES** listed above.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 2, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–8373 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2197–05]

RIN 0648–AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32 Supplement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental proposed rule; request for comments.

SUMMARY: NMFS proposes to supplement the regulations that implemented management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). After publication of the final rule for Amendment 32, published on February 10, 2012, NMFS identified inconsistencies in the regulatory text regarding the quotas and annual catch limits (ACLs) for ''other shallow water grouper'' (Other SWG) that need correction. This rule would revise the regulatory text regarding the quotas and ACLs for Other SWG. Additionally, NMFS proposes revisions to improve clarity of the regulations.

DATES: Written comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments on the supplemental proposed rule identified by ''NOAA–NMFS–2011–0135'' by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0135'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0135'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of Amendment 32, which includes a final environmental impact statement (FEIS), a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Background

A final rule to implement management measures described in Amendment 32 was published on February 10, 2012 (77 FR 6988). That final rule included measures to:

—Adjust the commercial gag quota and recreational annual catch target (ACT) for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32;
—Adjust the shallow-water grouper (SWG) quota;
—Adjust the commercial and recreational sector's ACLs for gag and red grouper;
—Adjust the commercial ACL for SWG;
—Establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota program in the Gulf;
—Set the recreational gag fishing season from July 1 through October 31;
—Reduce the gag commercial size limit to 22 inches (59 cm) total length (TL); and
—Modify the gag and red grouper accountability measures (AMs).

In planning the publication of the final rule for Amendment 32, NMFS anticipated it would publish before the final rule to implement the ACLs and Accountability Measures Amendment for Reef Fish, Red Drum, Shrimp, and Coral Fisheries of the Gulf of Mexico (Generic ACL Amendment). However, due to a delay in publishing the final rule for Amendment 32, the Generic ACL Amendment final rule published first (76 FR 82044, December 29, 2011) with implementation effective on January 30, 2012. The final rule for the Generic ACL Amendment removed the commercial SWG quotas and commercial SWG ACL and replaced them with separate multi-year commercial Other SWG quotas and stock complex ACLs for Other SWG. Inadvertently, the regulatory text in the Amendment 32 final rule setting the commercial SWG quotas and the commercial ACL for SWG was not modified to reflect the measures established in the Generic ACL Amendment. To correct this inconsistency, the subject supplemental proposed rule would reinstate the commercial Other SWG quotas and the stock complex commercial ACLs for Other SWG, as established in the final rule which implemented the Generic ACL Amendment, as well as remove the commercial SWG quotas and commercial SWG ACL implemented through Amendment 32. In addition, some minor revisions to improve the clarity of the regulations were identified and this rule would correct these issues. First, NMFS proposes to revise the term ''other SWG'' to read ''Other SWG'' throughout the 50 CFR part 622 regulations to improve the clarity of the regulations. If implemented, the definition of SWG would be amended to include the definition for Other SWG. In the Gulf, Other SWG would still include black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Second, in two instances in the regulations, sentences within a paragraph are reordered to improve clarity. Third, a sentence is deleted in the regulations, because it is already stated in the preceding paragraph and therefore is redundant.

NMFS requests comments for a period of 15 days regarding these revisions. These revisions will be addressed in a second final rule to implement Amendment 32. No other revisions or changes to the final rule implementing Amendment 32 are included here. All discussion of the management measures contained in Amendment 32, including the AMs, are provided in the proposed rule published on November 2, 2011 (76 FR 67656), the final rule published on February 10, 2012 (77 FR 6988), and in Amendment 32, and are not repeated here.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this supplemental proposed rule is consistent with the FMP, Amendment 32, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this supplemental proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this supplemental proposed rule is discussed in the preamble and not repeated here. The Magnuson-Stevens Act provides the statutory basis for this supplemental proposed rule.

This supplemental proposed rule, if implemented, would be expected to directly affect commercial fishing vessels that harvest Other SWG. Commercial harvest of Other SWG in the Gulf is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program. The IFQ program manages harvest through shares and allocation. Shares are a percentage of the commercial quota assigned to each IFQ shareholder and allocation is the actual poundage that each IFQ shareholder or allocation holder is given the opportunity to possess, land, or sell, during a given calendar year. Shareholders are the initial recipients of allocation, which can be transferred (sold) to and used by anyone with a valid commercial Gulf reef fish permit. Because anyone with a valid commercial Gulf reef fish permit can obtain and use Other SWG allocation, all commercial Gulf reef fish permit holders could be affected by this supplemental proposed rule. On February 28, 2012, 908 entities possessed a valid or renewable commercial Gulf reef fish permit. In 2010, however, only 282 commercial entities landed Other SWG in the Gulf. Comparable data for 2011 were not available at the time of this assessment.

No other small entities that would be expected to be directly affected by this supplemental proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and recreational services. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Average receipts data for all entities potentially affected by this rule are not available. The average commercial vessel in the Gulf reef fish fishery is estimated to earn approximately $48,000 (2010 dollars) per year in ex-vessel revenue. Based on this average revenue estimate, all commercial vessels expected to be directly affected by this supplemental proposed rule are determined for the purpose of this analysis to be small business entities.

This supplemental proposed rule, if implemented, would revise the regulatory text regarding the commercial quotas and the stock complex ACLs for Other SWG and would not be expected to reduce profits for a substantial number of small entities. Revision of the commercial quotas for Other SWG would increase the Other SWG commercial quotas by an average of 108,750 lb (49,328 kg), gutted weight (gw), per year over the period 2012–2015, or a total of 435,000 lb (197,312 kg), gw, relative to the status quo. These quota increases would be expected to result in an increase in ex-vessel revenue by an average of approximately $425,000 (2010 dollars) per year, or approximately $1.7 million (2010 dollars) total, for all affected commercial fishing businesses. As a result, this supplemental proposed rule, if implemented, would be expected to increase profits to all directly affected small business entities.

Because this supplemental proposed rule, if implemented, would not be expected to have any direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This supplemental proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 3, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622, is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition for ''Shallow-water grouper (SWG)'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (*i.e.,* black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.20(a)(6).

* * * * *

3. In § 622.20, paragraph (a) introductory text, the second sentence of paragraph (a)(4), paragraphs (a)(5)(i) and (a)(5)(ii), the second sentence of paragraphs (a)(6), (a)(7), (b)(3)(i), and the first sentence of paragraph (b)(6)(i) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

* * * * *

(4) * * * IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. * * *

(5) * * *

(i) *Red grouper multi-use allocation.* (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 * [Gag ACL—Gag commercial quota]/Red grouper commercial quota

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(ii) *Gag multi-use allocation.* (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 * [Red grouper ACL—Red grouper commercial quota]/Gag commercial quota

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) * * * For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) * * * For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

* * * * *

(b) * * *

(3) * * *

(i) * * * The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. * * *

* * * * *

(6) * * *

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes)

in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. * * *

* * * * *

4. In § 622.42, paragraph (a)(1)(iii) introductory text and paragraph (a)(1)(iii)(A) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

* * * * *

5. In § 622.49, paragraphs (a)(3) and (a)(4)(ii)(B) are revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).

(a) * * *

(3) *Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(4) * * *

(ii) * * *

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's target catch (ACT) is unnecessary.

* * * * *

[FR Doc. 2012–8376 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 67
Friday, April 6, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration and Management

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting of the Committee on Administration and Management of the Assembly of the Administrative Conference of the United States. The meeting will provide an opportunity for the committee to continue its consideration of a draft recommendation regarding the Paperwork Reduction Act. Complete details regarding the committee meeting, the contours of the project, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov*. Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Administration and Management.''

Comments may be submitted by email to *Comments@acus.gov,* with ''Committee on Administration and Management'' in the subject line, or by postal mail to ''Committee on Administration and Management Comments'' at the address given below.

ADDRESSES: The meeting will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Schleicher Bremer, Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Administration and Management

The Committee on Administration and Management will meet to continue its consideration of a draft recommendation on the Paperwork Reduction Act and proposed improvements to its implementation.

Date: Wednesday, May 2, 2012 from 1:30 p.m. to 4:30 p.m.

Dated: April 3, 2012.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2012–8369 Filed 4–5–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc# AMS–TM–12–0004; TM–12–01]

Notice of Funds Availability (NOFA) Inviting Applications for the 2012 Farmers' Market Promotion Program (FMPP)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $10 million in competitive grant funds for fiscal year (FY) 2012 to increase domestic consumption of agricultural commodities by expanding direct producer-to-consumer market opportunities. Examples of direct producer-to-consumer market opportunities include new farmers markets, roadside stands, community-supported agriculture (CSA) programs, agri-tourism activities, and other direct producer-to-consumer infrastructures. AMS hereby requests proposals from eligible entities within the following categories: Agricultural cooperatives, producer networks, producer associations, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers market authorities, and Tribal governments. Based on the available funding, AMS will award the most competitive applications that demonstrate measurable, outcome-based strategies that help increase farmers' or agricultural producers' revenue through direct producer to consumer marketing opportunities. The minimum award per grant is $5,000 and the maximum award per grant is $100,000. No matching funds are required.

DATES: Applications should be received and accepted,[1] via Grants.gov, not later than May 21, 2012. Applications received after the deadline will not be considered.

ADDRESSES: The 2012 Farmers' Market Promotion Program (FMPP), Agricultural Marketing Service, USDA, Room 4509–South Building, 1400 Independence Avenue SW., Washington, DC, 20250–0269, phone (202) 720–0933.

AMS will only accept application packages submitted via *http://www.Grants.gov.* AMS will not accept application packages by mail, hand delivery, email, or fax. Except for the submission of multiple applications (for instance, an EBT and a non-EBT project), all forms, narrative, letters of support, and other required materials must be forwarded in one application package. AMS strongly recommends that each applicant visit the AMS Web site at *http://www.ams.usda.gov/FMPP* to review a copy of the 2012 FMPP Guidelines and application instructions prior to preparing the proposal narrative and application.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Humphrey, Branch Chief, Marketing Grants and Technical Services Branch, Marketing Services Division, Transportation and Marketing Programs, AMS, USDA, on (202) 720–0933, or via facsimile on (202) 690–4152. State that your request for information refers to Docket No. TM–12–01.

SUPPLEMENTARY INFORMATION: This solicitation is issued pursuant to Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) as amended.[2] The amended act states that the purposes of the FMPP are ''(A) to increase domestic

[1] Note that it may take Grants.gov up to 48 hours to send an email confirming that the application was received and validated by the Grants.gov system. The application must have been received by Grants.gov prior to the FMPP deadline.

[2] Section 10605 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Farmers' Market Promotion Program (7 U.S.C. 3005) (FMPP) and as amended by section 10106 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246).

consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of domestic farmers markets, roadside stands, community-supported agriculture programs, agri-tourism activities and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of new farmers markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities.''

Detailed program guidelines may be obtained at *http://www.ams.usda.gov/FMPP* or from the contact listed above. In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to engage in further public participation under 5 U.S.C 553 because the applications for the FMPP need to be made available as soon as possible as the program season approaches.

Background

AMS will grant awards for projects that assist in developing, promoting, and expanding direct marketing of agricultural commodities from farmers to consumers. Eligible FMPP proposals should support marketing entities where agricultural farmers or vendors sell their own products directly to consumers, and the sales of these farm products represent the core business of the entity. Proprietary projects and projects that benefit one agricultural producer or individual will not be considered.

All eligible entities shall be entities owned, operated, and located within one or more of the 50 United States, the District of Columbia, or the U.S. territories.[3]

Additionally, eligible entities must apply for FMPP funds on behalf of direct marketing operators that include two or more agricultural farmers/vendors that produce and sell their own products through a common distribution channel. Individual agricultural producers and sole proprietors, including farmers and farmers market vendors, roadside stand operators, community-supported agriculture participants, and other individual direct marketers are not eligible for FMPP funds.

FMPP grant funds that are requested must support the specific programs and objectives identified in the application. In addition, all applications submitted under FMPP must include measurable, outcome-based strategies that describe how the project will achieve the goals identified in the application. Budget items that do not directly support these objectives will not be funded.

In a coordinated effort to enhance healthy food access in urban and rural areas in the United States, AMS is giving funding priority to the development and expansion of direct producer-to-consumer marketing outlets that sell healthy foods in food deserts (areas with limited access to affordable and nutritious food, particularly areas composed of predominantly lower-income neighborhoods and communities) or low-income areas (where the percentage of the population living in poverty is at least 20 percent). Under FMPP, healthy foods include whole foods such as fruits, vegetables, whole grains, fat free or low-fat dairy, and lean meats that are perishable (fresh, refrigerated, or frozen) or canned as well as nutrient-dense foods and beverages encouraged by the 2010 Dietary Guidelines for Americans (see *http://www.cnpp.usda.gov/DGAs2010–PolicyDocument.htm* for more information). Direct producer-to-consumer marketing outlets will include, but not be limited to, farmers markets, CSAs, and road-side stands.

These projects will receive five additional points under FMPP if, in addition to meeting all the other established criteria for FMPP projects, they are located in one of the USDA-identified food desert census tracts or they are located in a low-income area (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census). For additional information, see the 2012 FMPP Guidelines at *http://www.ams.usda.gov/FMPP.*

Not less than 10 percent of the total available funds will be used to support the use of new electronic benefits transfer (EBT) for Federal nutrition programs at farmers markets. To be considered within the 10 percent allotment of funds for EBT, the application narrative must clearly designate the applicant's intent to compete for FMPP funds as a new EBT project. FMPP funds shall be provided to successful proposals that demonstrate a plan to continue to provide EBT card access at one or more farmers markets following the completion of the grant.

When an applicant has multiple project goals, AMS requires that similar proposals be submitted in the application package. Due to the legislative mandate, the Agency differentiates projects as EBT-related or non EBT-related submissions. As such, all non-EBT projects must be submitted in one application and all new or existing EBT-related projects submitted in a second, distinctly separate application. For applicants submitting two or more applications, such applications must not contain the same or substantially the same narrative, logic model, or budget narrative. Each application must include distinctly separate information with an explanation of the goals and corresponding budget requests for each project submitted. Failure to comply with this requirement will result in the rejection of one or all of the applicant's proposals. Visit the 2012 FMPP Guidelines at *http://www.ams.usda.gov/FMPP* for instructions on submitting multiple applications.

While there is no limit to the number of applications that may be submitted, AMS will only award a maximum of one grant per organization in a funding year. Awardees from the FY 2011 grant program will not be considered for FMPP funding in FY 2012.

FMPP reserves the right to reject an application that is incomplete, does not follow the application requirements (i.e., is hand-written or in excess of the required page limitation), or propose activities that do not meet FMPP goals and objectives. Application packages without all of the required information will not be considered. FMPP's award decisions are final.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the FMPP information collection was previously approved by OMB and was assigned OMB control number 0581–0235.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

How To Submit Proposals and Applications

Each applicant must follow the application preparation and submission instructions provided within the 2012 FMPP Guidelines located at *http://www.ams.usda.gov/FMPP.* Forms, proposals, letters of support, or any other application materials (electronic or hard-copy) that are emailed, faxed, mailed, or hand-delivered directly to AMS–FMPP, AMS, or USDA staff will not be accepted.

[3] U.S. territories include: The Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Applicants will have only one submission method for proposals and applications to AMS—electronically through Grants.gov at *http://www.Grants.gov* (enter 10.168 in grant search field). AMS strongly encourages the applicant to initiate the electronic submission process at least four weeks prior to the application deadline. In cases where an applicant error has been made in Grants.gov, an early submission will ensure the appropriate time for the applicant to resubmit the application. Grants.gov applicants are not required to submit any paper documents to FMPP.

Any documents accompanying the application (acceptable written proof of eligibility, proposal narrative, budget(s), and other supporting documents) must be uploaded after item #15 (descriptive title of applicant's project section) on the Grants.gov form SF–424. FMPP prefers that all accompanying documents and support materials be scanned as a single PDF file; however, other acceptable formats include MS–Word (for text documents) and MS–Excel (for spreadsheet documents). Failure to comply with this requirement will result in rejection of the application.

FMPP will not accept corrections or additions to Grants.gov submissions, including corrections submitted by phone, fax, mail, hand-delivery, or electronic mail to AMS. All documentation accompanying each application must be submitted in the Grants.gov application package. The only means of making a correction or addition to a Grants.gov application is by re-submitting a new application prior to the deadline.

AMS/FMPP staff will not extend the application deadline or accept any application after the deadline due to Grants.gov submission errors. Additionally, AMS/FMPP staff does not provide technical assistance with the Grants.gov related issues. Applicants experiencing problems in electronic submission of documentation must request assistance via the Grants.gov Web site, or telephone the Contact Center at 1–800–518–4726. Grants.gov will provide confirmation to the applicant that the application was submitted and received by AMS before the deadline. AMS will email the organization's authorized representative (as listed on the SF–424) an explanation if the application is being rejected.

FMPP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.168. Subject agencies, including FMPP, must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Dated: April 3, 2012.

Robert C. Keeney,

Acting Administrator.

[FR Doc. 2012–8395 Filed 4–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Funding Availability (NOFA) for the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agency published a document in the **Federal Register** on January 20, 2012, at 77 FR 2948 to announce the acceptance of applications under the Rural Energy for America Program (REAP) for Fiscal Year 2012 for financial assistance as follows: Grants, guaranteed loans, and combined grants and guaranteed loans for the development and construction of renewable energy systems and for energy efficiency improvement projects; grants for conducting energy audits; grants for conducting renewable energy development assistance; and grants for conducting renewable energy system feasibility studies. The document contained two errors on page 2951 in reference to deadline dates for National competitions.

FOR FURTHER INFORMATION CONTACT: Contact the applicable USDA Rural Development Energy Coordinator for your respective State as identified in the original NOFA at 77 FR 2948.

SUPPLEMENTARY INFORMATION:

Need for Corrections

The deadline dates for National competitions need to reflect the correct year. The dates in the original NOFA contained the year ''2011'' rather than ''2012''. To clarify, all unfunded eligible grant only and grant and guaranteed loan combination applications received by March 30, 2012, will be competed against other grant only and grant and guaranteed loan combination applications from other States at a final National competition. In addition, all unfunded eligible guaranteed loan only applications received by June 29, 2012, will be competed against other guaranteed loan only applications from other States at a final National competition if the guaranteed loan reserves have not been completely depleted.

Correction of Publication

In the **Federal Register** dated January 20, 2012, the following are corrected:

1. On page 2951, column 1, the eighteenth line down under C. State and National competitions, ''March 30, 2011'' is corrected to read ''March 30, 2012''.

2. On page 2951, column 2, tenth line down, ''June 29, 2011'' is corrected to read ''June 29, 2012''.

Dated: March 21, 2012.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2012–8252 Filed 4–5–12; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the North Carolina Advisory Committee (Committee) to the Commission will meet on Wednesday, April 25, 2012, at the Conference Center, Sheraton Hotel, 3121 Highpoint Rd., Greensboro, NC 27407, for the purpose of receiving a briefing on equal educational opportunity and to discuss the Committee's draft report on school discipline. The briefing meeting is scheduled to begin at 1 p.m. and adjourn at approximately 2 p.m. The planning meeting is scheduled to begin at approximately 2 p.m. and adjourn at approximately 3 p.m.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office of the Commission by May 25, 2012. The address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Elida Rodriguez, Administrative Assistant, Southern Regional Office, at (404) 562–7000, (or for hearing impaired TDD 800–877–8339), or by email to *erodriguez@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working

days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Southern Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 2, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–8237 Filed 4–5–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–4–2012]

Foreign-Trade Zone 161—Sedgwick County, KS; Application for Temporary/Interim Manufacturing Authority; Siemens Energy, Inc.; (Wind Turbine Nacelles and Hubs); Hutchinson, KS

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Sedgwick County, grantee of FTZ 161, requesting temporary/interim manufacturing (T/IM) authority within FTZ 161 at the Siemens Energy, Inc. (Siemens), facilities located in Hutchinson, Kansas. The application was filed on April 2, 2012.

The Siemens facilities (approximately 300 employees, up to 800 nacelles and hubs/year) are located at 1000 Commerce Street (Site 3) and 714 North Corey Road (Site 4) in Hutchinson (Reno County), Kansas. Under T/IM procedures, Siemens has requested authority to produce wind turbine nacelles and hubs (HTSUS 8412.80, 8412.90, 8502.31; duty rates: free, 2.5%). Foreign components that would be used in production (representing up to 50% of the value of the finished nacelles and hubs) include: greases/oils (HTSUS 2710.19), resins (3214.10), plastic/rubber washers and seals (3926.90), weather strips (4008.11), hydraulic hoses (4009.21, 4009.42), rubber gaskets and o-rings (4016.93), vibration dampeners (4016.99), screws/bolts (7318.15), bolt extenders (7318.19), springs (7320.20), clamps and brackets (7326.90), support adapters (7412.20), base metal mountings/fittings/brackets (8302.49), filters (8421.23), grease systems (8479.89), valves (8481.80), bearings (8482.10), gears (8483.40), ring modules (8483.90), nozzles (8487.90), motors (8501.20), generators (8501.64), plates/guides/cables (8503.00, 8544.49), slip rings (8535.90), cable glands (8536.90), electrical panels/boards (8537.10), lamps (8539.49), and sensors (9031.80) (duty rate range: free—9.0%, 1.3¢/kg + 5.7%). T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt Siemens from customs duty payments on the foreign components used in export production. On its domestic sales, Siemens would be able to choose the duty rates during customs entry procedures that apply to wind turbine nacelles and hubs (duty rate: free, 2.5%) for the foreign inputs noted above.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is May 7, 2012.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 2, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–8380 Filed 4–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. This review covers the respondents, Pacific Pipe Public Company Limited (Pacific Pipe) and Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai). The Department preliminarily determines that sales of circular welded carbon steel pipes and tubes have been made below normal value (NV) during the March 1, 2010, through February 28, 2011 period of review (POR). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986). On March 1, 2011, the Department published a notice of opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 11197 (March 1, 2011). On March 23, 2011, and March 31, 2011, respectively, Pacific Pipe and Saha Thai requested that the Department conduct an administrative review of their sales of circular welded carbon steel pipes and tubes from Thailand in the U.S. market.

On March 31, 2011, Wheatland Tube Company, a producer of the domestic like product, requested that the Department conduct an administrative review of Pacific Pipe and Saha Thai. On April 27, 2011, the Department initiated an administrative review of Pacific Pipe and Saha Thai. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011).

On May 26, 2011, the Department issued an antidumping duty questionnaire to Pacific Pipe. On June 14, 2011, Pacific Pipe submitted its Section A response. On June 16, 2011, Pacific Pipe requested an extension of time to respond to Sections B and C of the initial questionnaire until July 1, 2011. On June 29, 2011 Pacific Pipe requested an additional extension to submit its initial response to Sections B and C of the initial questionnaire, which the Department approved by letter on July 1, 2011. On July 11, 2011, Pacific Pipe submitted its responses to Sections B and C.

During the course of Pacific Pipe's only previous review, a new shipper review, no domestic interested party filed a below cost allegation with the Department. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty New Shipper Review,* 75 FR 4529 (January 28, 2010). Thus, the Department did not initially issue Section D of the questionnaire to Pacific Pipe. However, a domestic interested party submitted an allegation of sales below cost at the outset of this administrative review. Based on our analysis of the allegation, we found that there were reasonable grounds to believe or suspect that Pacific Pipe's sales of pipes and tubes in its home market were made at prices below the cost of production (COP). Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a sales-below-cost investigation to determine whether sales were made at prices below COP. *See* Memorandum to Barbara E. Tillman from the Team, ''Petitioner's Allegations of Sales Below the Cost of Production for Pacific Pipe Public Company Limited,'' dated October 17, 2011.

Thus, on October 18, 2011, we issued Section D of the questionnaire to Pacific Pipe. On December 7, 2011, Pacific Pipe submitted its response to Section D. We issued supplemental questionnaires to Pacific Pipe from September 2011 through February 2012 to which Pacific Pipe timely responded.

On May 11, 2011, the Department issued a questionnaire to Saha Thai. On May 24, 2011, Saha Thai requested an extension of time to respond to Section A of the questionnaire; we granted this extension in a letter dated May 25, 2011. On June 13, 2011, Saha Thai submitted its response to Section A of the original questionnaire. On June 28, 2011, the Department granted Saha Thai until July 11, 2011, to submit its response to Sections B, C, and D of the Department's original questionnaire; on July 11, 2011, Saha Thai submitted its response to Sections B, C, and D. On December 21, 2011, the Department issued an additional supplemental questionnaire for Sections A, B, and C. On January 5, 2012, the Department issued an additional extension until January 12, 2012. On December 28, 2011, the Department issued a Section D supplemental questionnaire. On January 9, 2012, we granted Saha Thai an extension until January 26, 2012, to respond to the Section D supplemental questionnaire. On February 6, 2012, the Department issued an additional supplemental questionnaire for Section D. On February 14, 2012, the Department issued an additional supplemental questionnaire for Sections B and C. On February 16, 2012, the Department granted Saha Thai an extension for submitting both the narrative and data portions of the Section B, C, and D supplemental questionnaires and on February 27, 2012, Saha Thai submitted responses. On March 20, 2012, the Department issued an additional supplemental questionnaire for Section D, which is currently due on April 10, 2012. This response will be considered for the final results of review.

Scope of the Order

The products covered by the antidumping order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope is dispositive.

Period of Review

The POR is March 1, 2010, through February 28, 2011.

Comparisons to Normal Value

To determine whether sales of circular welded carbon steel pipes and tubes from Thailand were made at less than NV, we compared the export price (EP) of both Pacific Pipe's sales and Saha Thai's sales made to unaffiliated customers in the United States to NV, as described below in the ''Normal Value'' section of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EP of individual transactions to monthly weighted-average NVs.

Product Comparisons

Pursuant to section 771(16) of the Act, we determined products described in the ''Scope of the Order'' section, above, sold by Pacific Pipe and Saha Thai in Thailand during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales of subject merchandise to comparison-market sales: grade, size (nominal pipe size), wall thickness, schedule of pipe sold, surface finish, and end finish. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to home market sales of the most similar foreign like product on the basis of the characteristics listed above.

In order to make the product comparisons more accurate, we have made some adjustments to the ordering of codes reported by both Pacific Pipe and Saha Thai for the ''grade'' characteristic. For more information, *see* Memorandum to the File from Andrew Huston, ''Analysis Memorandum of Pacific Pipe Public Company Limited for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the Period 03/01/2010 through 02/28/2011,'' dated concurrently with this notice (Pacific Pipe Preliminary Analysis Memorandum), and Memorandum to the File from Jacqueline Arrowsmith, ''Analysis Memorandum of Saha Thai Steel Pipe (Public) Company, Ltd. for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the Period 03/01/2010 through 02/28/2011,'' dated concurrently with this notice (Saha Thai Preliminary Analysis Memorandum). Interested parties will have 10 days from the date of publication of these preliminary results to submit new factual information to be considered

with respect to the changes made by the Department to the matching criteria. Comments on the product comparisons used in these preliminary results as well as comments on any new factual information should be included in the case and rebuttal briefs.

Date of Sale

Pacific Pipe

The Department normally uses the date of invoice as the date of sale, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i). For Pacific Pipe, we preliminarily determine that no departure from our standard practice is warranted. For purposes of this review, we examined whether Pacific Pipe's reported invoice date for its home market sales and its pro forma invoice date for its U.S. sales were the appropriate dates of sale. The record for Pacific Pipe does not indicate that material terms of sale are established at an earlier or later date in the sales process than the invoice date in the home market and the pro forma invoice date in the U.S. market.[1] Therefore, we preliminarily determine that the two invoice dates reported by Pacific Pipe as its dates of sale are the appropriate dates of sale.

Saha Thai

For Saha Thai, we preliminarily determine that contract date is the appropriate date of sale for U.S. sales in this administrative review because it best represents the date upon which the final material terms of sale were established. This is consistent with the most recently completed administrative review of this proceeding. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part of Antidumping Duty Administrative Review,* 75 FR 18788, 18790 (April 13, 2010) (*2008–2009 Preliminary Results*), unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 75 FR 64696 (October 20, 2010) (*2008–2009 Final Results*). In the home market, the date of invoice is when material terms of sale are established. Therefore, we are using the invoice date as the date of sale for home market sales. This is consistent with the most recently completed administrative review of this proceeding. *Id.*

Margin Calculation

Export Price

Pacific Pipe

The Department based the price of all U.S. sales of subject merchandise by Pacific Pipe on EP as defined in section 772(a) of the Act because the merchandise was sold by Pacific Pipe to an unaffiliated purchaser in the United States before importation. We calculated EP based on the FOB port price charged to the unaffiliated purchaser in the United States. *See* section 772(c) of the Act. We made adjustments to price for domestic inland freight, inland insurance, and domestic inland brokerage reported by Pacific Pipe.

Section 772(c)(1)(B) of the Act states that EP should be increased by the amount of any import duties ''imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States. * * *.'' Pacific Pipe claimed an adjustment to EP for the duties rebated or exempted on its imports of hot-rolled steel coil. In determining whether an adjustment should be made to EP for this rebate or exemption, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation. We do require, however, that the company meet our ''two-pronged'' test in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product. *See, e.g., Saha Thai Steel Pipe (Public) Co.* v. *United States,* 635 F.3d 1335, 1340–1341 (Fed. Cir. 2011).

Pacific Pipe did not demonstrate how it met the second prong of our ''two-pronged'' test. Specifically, despite being given three opportunities to do so, Pacific Pipe did not demonstrate how the imported material was sufficient to account for the total of the import duties rebated or exempted for the export of the manufactured product during the relevant time period. Thus, we are not making an adjustment for a duty drawback rebate or exemption.

Pacific Pipe submitted information about the Blue Corner Rebate and requested a duty drawback adjustment for this program as well on relevant sales. For these preliminary results, we are not making an adjustment to EP because Pacific Pipe did not provide information to show how the Blue Corner Rebate fulfills each of the two prongs of our two-pronged test described above.

Saha Thai

We classified all of Saha Thai's sales to its U.S. customers as EP sales because, pursuant to section 772(a) of the Act, we found that Saha Thai is not affiliated with its distributors, which are the first purchasers in the United States. In accordance with section 772(c)(2) of the Act, we made deductions from the gross unit price for foreign inland freight, foreign brokerage and handling, foreign inland insurance, foreign warehousing, ocean freight, lighterage charges, U.S. brokerage and handling charges, and U.S. duties. In our review of the sales contracts, we learned that gross unit price contained freight revenue. We used the information contained in these sales contracts in conjunction with the sales database to derive an invoice-specific freight revenue amount for each transaction where freight revenue was incurred. We are following our normal practice with regard to capping the amount of freight revenue allowed by the amount of the freight expense incurred. *See, e.g., Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part,* 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

Saha Thai claimed an adjustment to EP for the duties exempted on its imports of hot-rolled steel coil into a bonded warehouse. As explained above, in determining whether an adjustment should be made to EP for this exemption, we have a ''two-pronged'' test. Saha Thai has provided information that demonstrates that it meets both prongs of our ''two-pronged'' test. Therefore, for these preliminary results, we are making an upward adjustment to export price for these duty exemptions. *See* Saha Thai Preliminary Analysis Memorandum.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of pipes and tubes in the home market to serve as a viable basis for calculating NVs, we

[1] The ''pro forma invoice'' is used only in the U.S. market. Its purpose relates to the letters of credit used to pay for U.S. sales. While a separate commercial invoice is issued later in the sales process for U.S. sales, the terms of sale are fixed in the ''pro forma invoice.''

compared the volume of each respondent's home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. In accordance with section 773(a)(1)(B) of the Act, and 19 CFR 351.404(b), because both Pacific Pipe's and Saha Thai's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we find that the home market is viable for comparison purposes for both respondents. *See* Pacific Pipe's questionnaire response, dated June 14, 2011, at Exhibit 1; Pacific Pipe's supplemental questionnaire response, dated October 24, 2011, at Exhibit S2–1; Saha Thai's questionnaire response, dated June 13, 2011, at Exhibit A–1; and Saha Thai's supplemental questionnaire response, dated July 11, 2011, at Exhibit A–1.

B. Affiliated Party Transactions and the Arm's-Length Test

Pacific Pipe

Pacific Pipe did not have sales to affiliates in the home market.

Saha Thai

The Department's practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. To examine whether home market sales were made at arm's length, we compared on a product- and level of trade (LOT)-specific basis the starting price of sales to affiliated customers to the starting price of sales to unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing. Where the prices to the affiliated party were, on average for all products, within a range of 98 to 102 percent of the same or comparable merchandise to all unaffiliated parties, we determined that all of the sales made to that affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002). Where the affiliated party did not pass the arm's-length test, the Department excluded all sales to that affiliated party from the NV calculation. With certain exceptions, because such sales were either consumed by the affiliate or were in insignificant volumes, in accordance with 19 CFR 351.403(d), we did not rely on downstream sales in place of the excluded sales to the affiliate. For the exceptions, we relied on downstream sales reported by the affiliated reseller.

C. Cost of Production Analysis

We examined the cost data for both Pacific Pipe and Saha Thai and determined that our quarterly cost methodology was not warranted. Therefore, we have applied our standard cost methodology, using POR costs based on the reported data, adjusted as described below.

Pacific Pipe

As discussed above, we initiated a sales-below-cost investigation regarding Pacific Pipe's sales in this review. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Pacific Pipe's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expenses, and home market packing costs. Details regarding the calculation of COP, including adjustments made to the COP reported by Pacific Pipe, as well as other calculation details, can be found in the Pacific Pipe Preliminary Analysis Memorandum, with attached SAS program logs and outputs, and the Memorandum from James Balog to Neal M. Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pacific Pipe Public Company Limited,'' dated concurrently with this notice (Pacific Pipe Preliminary Cost Memorandum).

We revised Pacific Pipe's reported costs as follows. We increased Pacific Pipe's reported general and administrative (G&A) expenses to include relevant expenses incurred by its parent company. *See* Pacific Pipe Preliminary Cost Memorandum. We revised Pacific Pipe's financial expense ratio calculation to be based on its consolidated financial statements rather than its unconsolidated financial statements as reported. We increased Pacific Pipe's reported cost of manufacturing (COM) to adjust for an unexplained difference between its reported production quantities and the production quantities included in its normal books and records. We increased Pacific Pipe's reported COM to account for an unreconciled difference between its submitted costs and the costs recorded in its normal books and records. For CONNUMs which were sold but not produced, we used the Department's normal model match analysis to determine the cost of the most similar product produced during the POR.

Saha Thai

We found that Saha Thai made sales below cost in the most recently completed segment of this proceeding in which Saha Thai was examined, and such sales were disregarded. *See 2008–2009 Preliminary Results,* 75 FR at 18792, unchanged in *2008–2009 Final Results.* Thus, in accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Saha Thai's cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, interest expenses, and home market packing costs. Details regarding the calculation of COP, including adjustments made to the COP reported by Saha Thai, as well as other calculation details can be found in the Saha Thai Preliminary Analysis Memorandum, with attached SAS program logs and outputs, as well as the Memorandum from LaVonne Clark to Neal M. Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Saha Thai Steel Pipe (Public) Company, Ltd.,'' dated concurrently with this notice (Saha Thai Preliminary Cost Memorandum).

We disallowed Saha Thai's reported scrap offset because it included revenues from sales of non-prime merchandise. We increased Saha Thai's reported painting labor costs to reflect the higher of transfer or market prices in accordance with section 773(f)(2) of the Act. We also increased Saha Thai's reported COM for the unreconciled difference between the reported costs and Saha Thai's normal books and records. We revised the numerator of Saha Thai's G&A expense ratio to exclude profit from galvanizing services, duty refunds for hot-rolled coil purchased prior to the POR, and insurance claims for damaged goods related to specific sales. We revised the denominator of the G&A expense ratio to include the cost of sales and services less movement costs, packing expenses, and zinc scrap offsets. For reasons explained in the business proprietary cost memorandum, we set Saha Thai's financial expense ratio to zero. For more information on the changes to Saha Thai's COP, *see* Saha Thai Preliminary Cost Memorandum.

D. Cost of Production Test

For both respondents, we compared the revised COP figures to home market prices on a product-specific basis, net of applicable billing adjustments, discounts and rebates, movement charges, selling expenses, and packing, to determine whether home market sales

had been made at prices below COP. In determining whether to disregard home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with section 773(b) of the Act, where less than 20 percent of a given product was sold at prices less than COP, we disregarded no below-cost sales of that product, because the below-cost sales were not made in ''substantial quantities.'' However, we disregarded the below-cost sales that: (1) Have been made within an extended period of time (within six months to one year) in substantial quantities (20 percent or more), as defined by section 773(b)(2)(B) and (C) of the Act; and (2) were not made at prices which permit recovery of all costs within a reasonable period of time, as prescribed by section 773(b)(2)(D) of the Act. Accordingly, we determined to disregard certain of Pacific Pipe's and Saha Thai's sales in the calculation of NV because (1) 20 percent or more of a given product was sold at prices less than COP and (2) based on our comparison of prices to weighted-average COP values for the POR, they were made at prices that would not permit recovery of all costs within a reasonable period of time. We used the remaining home market sales for both Pacific Pipe and Saha Thai as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Pacific Pipe Preliminary Analysis Memorandum and Saha Thai Preliminary Analysis Memorandum.

E. Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) for Pacific Pipe as the basis for NV when there were no above-cost and contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with the Act, we based SG&A expenses and profit on the amounts incurred and realized by Pacific Pipe in connection with production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted-average home market selling expenses. We made the same adjustments to Pacific Pipe's reported costs as noted in the COP section above. *See* Pacific Pipe Preliminary Cost Memorandum.

After disregarding certain home market sales priced below cost, as described above, home market sales of contemporaneous identical and similar products existed that allowed for price-to-price comparisons for all U.S. sales for Saha Thai. Therefore, the Department did not rely on CV for its dumping margin calculations for Saha Thai for these preliminary results. *See* Saha Thai Preliminary Analysis Memorandum.

F. Price-to-Price Comparisons

Pacific Pipe

We calculated NV based on packed prices to unaffiliated customers in the home market. We used Pacific Pipe's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (COS) for home market and U.S. credit expenses in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. Finally, where applicable, we made adjustments for differences in costs attributable to differences in the physical characteristics of the sales matched, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.410.

Saha Thai

We calculated NV based on Saha Thai's home market net price. We used Saha Thai's discounts and movement expenses as reported. We made deductions, where appropriate, for foreign inland freight and warehousing expenses. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made a COS adjustment for home market and U.S. credit expenses, as well as U.S. bank charges. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. Finally, where applicable, we made adjustments for differences in costs attributable to differences in the physical characteristics of the sales matched, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.410.

Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, NV is normally the price that is in the home market that is at the same LOT as the EP. The NV LOT is that of the starting-price sale in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from exporter to importer. To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.410(c). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Pacific Pipe

In the home market, Pacific Pipe reported its sales to several customer categories through two channels of distribution: Ex-factory and direct shipments from Pacific Pipe to its customer. Pacific Pipe reported that the selling functions in the home market do not differ between the two channels of distribution nor among different customer categories. *See* Pacific Pipe supplemental questionnaire response, dated October 24, 2011, at Exhibit S2–3. In the U.S. market, Pacific Pipe reported that the selling functions (other than freight) are identical to the selling functions in the home market. Our preliminary analysis of Pacific Pipe's responses indicates selling functions do not vary significantly by customer category,[2] channel of distribution, or market. While there is a difference between the home and U.S. markets in terms of arranging freight, this difference appears insignificant. For a full analysis, *see* ''Level of Trade'' section in the Pacific Pipe Preliminary Analysis Memorandum.

Saha Thai

For the U.S. market, Saha Thai reported only one LOT for its EP sales.

[2] While there is no evidence on the record indicating differences in selling functions depending on customer category, the Department intends to ask for additional information in a post-preliminary supplemental, as it appears some customers would typically require a greater level of assistance than others. We intend to require Pacific Pipe to clarify its responses indicating that no distinctions at all among customers.

For its home market sales, Saha Thai reported that its sales to unaffiliated customers were at the same LOT as its U.S. sales. However, Saha Thai reported that, if the Department used the downstream sales of any of its affiliated resellers, these sales were made at a distinct LOT. Thus, it claims, in such circumstances, its home market would consist of two LOTs. As such, Saha Thai provided information about the marketing and selling functions performed by the affiliated resellers for their sales to unaffiliated customers. *See* Saha Thai's Section A questionnaire response, dated June 13, 2011 at 20–28 and Exhibit A–9.

Our preliminary analysis of Saha Thai's responses indicates selling functions do not vary significantly by customer category [3] or market, but do vary by distribution channel. Specifically, we preliminarily find that Saha Thai sold at two LOTs in the home market (sales directly to customers and sales through affiliated resellers), and at one LOT in the U.S. market (sales directly to customers).[4] For our complete analysis, *see* ''Level of Trade'' section in the Saha Thai Preliminary Analysis Memorandum; *see also 2008–2009 Preliminary Final Results,* 75 FR at 18792–93, unchanged in *2008–2009 Final Results.* The Saha Thai Preliminary Analysis Memorandum includes the Department's conclusions in chart form indicating how selling functions vary by distribution channel, and how they do not otherwise vary by customer or market. However, because we were able to match all U.S. sales to home market sales at a comparable LOT, no LOT adjustment was necessary.

Currency Conversions

Pursuant to section 773A(a) of the Act and 19 CFR 351.415, we made currency conversions for Pacific Pipe and Saha Thai sales based on the daily exchange rates in effect on the dates of the relevant U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period March 1, 2010, through February 28, 2011.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Pacific Pipe Public Company Limited	5.81
Saha Thai Steel Pipe (Public) Company, Ltd.	1.23

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, where Pacific Pipe or Saha Thai reported the entered value for its sales, we will calculate importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the antidumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b). However, where Pacific Pipe or Saha Thai did not report the entered value for its sales, we will calculate importer-specific (or customer-specific) per unit duty assessment rates.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate will be the ''all other'' rate of 15.67 percent established in the LTFV investigation. *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes From Thailand,* 51 FR 8341 (March 11, 1986). These deposit rates, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf* or *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Unless extended by the Department, interested parties must submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed not later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended. *See* section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[3] While there is no evidence on the record indicating differences in selling functions depending on customer category, the Department intends to ask for additional information in a post-preliminary supplemental, as it appears some customers would typically require a greater level of assistance than others. We intend to require Pacific Pipe to clarify its responses indicating that no distinctions at all among customers.

[4] As discussed above, we excluded sales to several affiliated resellers that did not pass the arm's-length test. For one remaining affiliated reseller, whose sales also did not pass the arm's-length test, we used downstream sales reported by the affiliated reseller.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–8383 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–855, A–570–900]

Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2011, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative reviews of the antidumping duty orders on diamond sawblades and parts thereof (diamond sawblades) from the Republic of Korea (Korea) and the People's Republic of China (PRC). *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011) (*Preliminary Results—Korea*) and *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 76 FR 76135 (December 6, 2011) (*Preliminary Results—PRC*). On March 13, 2012, we extended the deadline for the final results of the administrative review of the antidumping duty order on diamond sawblades from the PRC. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 77 FR 14733 (March 13, 2012). The final results of the administrative reviews of the antidumping duty orders on diamond sawblades from Korea and the PRC are currently due no later than April 4, 2012, and May 14, 2012, respectively.

Extension of Time Limits for the Final Results of Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days after the date on which the preliminary results are published.

We determine that it is not practicable to complete the final results of these reviews within the current time limits because we need additional time to consider new allegations in both the PRC and Korea proceedings. Section 751(a)(3)(A) of the Tariff Act of 1930 (''Act'') allows us to extend the deadline for the final results of these reviews to June 3, 2012, which is 180 days after the date of the publication of the *Preliminary Results—Korea* and the *Preliminary Results—PRC.* Because June 3, 2012, falls on a weekend, we shall issue the final results of these reviews on June 4, 2012. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: March 30, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–8370 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Foundry Coke Products From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2011, the Department of Commerce (''Department'') initiated the second five-year (''sunset'') review of the antidumping duty order on foundry coke products (''foundry coke'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). On the basis of a notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested parties,[1] as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1). As a result of the sunset review, the Department finds that revocation of the antidumping duty order on foundry coke from the PRC would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats and Ricardo Martinez Rivera, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5047 and (202) 482–4532, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2011, the Department initiated the second sunset review of the antidumping duty order on foundry coke from the PRC,[2] pursuant to section 751(c) of the Act and 19 CFR 351.218(c)(2). The Department received a notice of intent to participate from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties. As a result, the

[1] ABC Coke, Erie Coke, Tonawanda Coke, and Walker Coke (collectively, the ''domestic interested parties'').

[2] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 74775 (December 1, 2011); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products from The People's Republic of China* 66 FR 48025 (September 17, 2001) (''*Order*'').

Department conducted an expedited sunset review of the *Order,* pursuant to 19 CFR 351.218(e)(1).

Scope of the Order

The product covered under the antidumping duty order is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100 mm (4 inch) sieve, of a kind used in foundries. The foundry coke products subject to the antidumping duty order were classifiable under subheading 2704.00.00.10 (as of Jan 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the *Order* is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Foundry Coke from the People's Republic of China'' (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with and hereby adopted by this notice. The issues discussed in the Decision Memorandum include (1) the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Order* was to be revoked; and (2) the magnitude of the margins likely to prevail. Parties may find a complete discussion of all issues raised in the review and the corresponding recommendations in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be access directly on the Web at *http://ia.ita.doc.gov/frn.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
Shanxi Dajin International (Group) Co. Ltd	101.62
Sinochem International Co. Ltd	105.91
Minmetals Townlord Technology Co. Ltd	75.58
CITIC Trading Company, Ltd	48.55
PRC–Wide Rate	214.89

Notice Regarding Administrative Protective Order (''APO'')

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752, and 771(i)(1) of the Act.

Dated: March 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–8368 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Work Group on Measuring Systems for Taxis

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is forming a Work Group (WG) to develop proposals to revise the current Taximeters Code in NIST Handbook 44 (HB 44), *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,* to adequately address emerging technologies used to assess charges based on time and/or distance measurements in taxi applications and to ensure that the prescribed methodologies and standards facilitate measurements that are traceable to the International System of Units (SI).

DATES: A preliminary web-based meeting or teleconference will be held on Wednesday, May 23, 2012, from 1:30 p.m. to 3:30 p.m. Eastern time. This meeting is intended to be a precursor to any subsequent face-to-face meeting and will serve to provide further information and orientation regarding the objectives of the WG. To register for this preliminary meeting, please submit your full name, email address, and phone number to Mr. John Barton by April 30, 2012, using the contact information provided below.

ADDRESSES: The preliminary meeting will be held using either a teleconference or a web-based format where participants will join the meeting remotely by telephone and/or computer. Once registered, participants will receive login and/or call-in instructions via email.

FOR FURTHER INFORMATION CONTACT: Mr. John Barton, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Mr. Barton by telephone (301) 975–4002 or by email at *john.barton@nist.gov.*

SUPPLEMENTARY INFORMATION: The formation of this WG is intended to bring together government officials and representatives of business, industry, trade associations, and consumer organizations on the subject of standards and test procedures used in the testing of commercial measuring devices and systems by regulatory officials and service companies. NIST participates to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprises the regulatory control of commercial weighing and measuring devices and systems and other trade and commerce issues.

The WG will review existing requirements and test procedures currently referenced in HB 44 Section 5.54., Taximeters Code, and propose changes as needed. They will also identify gaps between the Code and technologies currently in use in taxi applications. Additionally, the WG will identify and develop proposed modifications to HB 44 regarding inspection procedures used by regulatory weights and measures officials. These changes will be presented as proposals through the National Conference on Weights and Measures (NCWM).

Included among the topics to be discussed by the WG for current and emerging device technologies used in commercial distance measuring systems are: Metrology laboratory standards and test procedures, uncertainties,

measurement traceability, tolerances and other technical requirements for commercial measuring systems, existing standards for testing equipment, field implementation, data analysis, field test and type evaluation procedures, field enforcement issues, training at all levels, and other relevant issues identified by the WG. WG recommendations may result in the revision of current standards or the development of new standards for testing equipment, including documents such as the NIST Handbook 105 Series for field standards; NIST HB 44, *Specifications, Tolerances, and Technical Requirements for Weighing and Measuring Devices;* NIST Examination Procedure Outlines; and NIST Handbook 137, *Examination of Distance Measuring Devices,* as well as proposed changes to requirements and testing procedures for commercial devices and systems used to assess charges to consumers based on time and/or distance measurements.

Dated: March 30, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–8365 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: NIST announces that the Manufacturing Extension Partnership (MEP) Advisory Board, National Institute of Standards and Technology (NIST) will hold an open meeting on Sunday, May 6, 2012, from 9 a.m. to 5 p.m.

DATES: The meeting will convene on Sunday, May 6, 2012, at 9 a.m. and will adjourn at 5 p.m. the same day.

ADDRESSES: The meeting will be held at the Orlando World Center Marriott Resort and Convention Center, 8701 World Center Drive, Orlando, Florida 32821.

Please see admission instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269.

SUPPLEMENTARY INFORMATION: This meeting is being held in conjunction with MEP's Manufacturing Innovations 2012 Conference in Orlando, Florida. The MEP Advisory Board (Board) is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. This meeting will focus on (1) discussions with local MEP Board members, (2) a national manufacturing strategy, and (3) an update on MEP's workforce initiatives. The agenda may change to accommodate other Board business.

Admission Instructions: Anyone wishing to attend this meeting should submit their name, email address and phone number to Karen Lellock (*karen.lellock@nist.gov* or 301–975–4269) no later than April 30, 2012.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by email to *karen.lellock@nist.gov.*

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–8366 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB148

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Northeast Fisheries Science Center (NEFSC) contains all of the required information and warrants further consideration. The EFP would exempt participating vessels from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of collecting fishery dependent catch data and biological samples.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on EFP applications.

DATES: Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on NEFSC Study Fleet EFP.''
- *Mail:* Daniel S. Morris, Acting Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NEFSC Study Fleet EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, 978–675–2153, *Brett.Alger@noaa.gov.*

SUPPLEMENTARY INFORMATION: NEFSC submitted a complete application for an EFP on February 28, 2012, to enable data collection activities that the regulations on commercial fishing would otherwise restrict. The EFP

would exempt 29 federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and land fish.

The NEFSC Study Fleet Program was established in 2002 to more fully characterize commercial fishing operations and to leverage sampling opportunities to augment NMFS data collection programs. Participating vessels are contracted by NEFSC to collect tow by tow catch and environmental data, and to fulfill specific biological sampling needs identified by NEFSC. To collect these data, the NEFSC Study Fleet Program has obtained an EFP to secure the necessary waivers needed by the vessels to obtain fish that would otherwise be prohibited by regulations.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

Participating vessels would also be authorized to retain and land, in limited situations for research purposes only, fish that do not comply with fishing regulations. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, in marked totes, which would be delivered to Study Fleet Program technicians. The NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish in excess of possession limits and/or below minimum size limits to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs, as detailed below. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than scientific research.

The table below details the regulations from which the participating vessels would be exempt. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. All catch of stocks allocated to Sectors by vessels on a Sector trip would be deducted from the Sector's Annual Catch Entitlement for each Northeast multispecies stock regardless of what fishery the vessel was participating in when the fish was caught.

NEFSC Study Fleet Program EFP

Number of Vessels	29.
Possession	Possession for at-sea sampling plus limited landing.
Exempted regulations in 50 CFR part 648	*Size limits*.
	§ 648.83(a)(3) NE multispecies minimum size.
	§ 648.93 Monkfish minimum fish size.
	§ 648.103 Summer flounder minimum fish size.
	§ 648.143(a) Black sea bass minimum fish size.
	Possession restrictions.
	§ 648.86(b) Atlantic cod.
	§ 648.86(c) Atlantic halibut.
	§ 648.86(e) White hake.
	§ 648.86(g) Yellowtail flounder.
	§ 648.86(g)(1) Southern New England yellowtail flounder possession limit.
	§ 648.86(j) Georges Bank winter flounder.
	§ 648.86(l) Zero retention of SNE winter flounder and Atlantic wolffish.
	§ 648.94 Monkfish possession limit.
	§ 648.22(c) Incidental possession limit of long-finned squid.
	§ 648.322 Skate possession and landing restrictions.
	§ 648.145 Black sea bass possession limits.
	§ 648.235 Spiny dogfish possession and landing restrictions.

NEFSC Study Fleet Program's Sampling Needs

Haddock-whole fish would be retained for maturity and fecundity research. The haddock retained would not exceed 30 fish per trip, or 360 fish for all trips. The maximum weight of haddock on any trip would not exceed 120 lb (54.43 kg) total weight per trip, and would not exceed 1,440 lb (653.17 kg) for all trips combined.

Yellowtail Flounder—whole fish would be retained for maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. The yellowtail flounder retained would not exceed 120 fish per month from each of the three stock areas (Gulf of Maine (GOM), Georges Bank (GB), Southern New England/Mid-Atlantic (SNE/MA)), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 50 lb (22.70 kg) total weight, and would not exceed 1,500 lb (680.39 kg) for all trips combined.

Summer Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The summer flounder retained would not exceed 120 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 3,000 lb (1,360.78 kg) for all trips combined.

Winter Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The winter flounder retained would not exceed 120 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not

exceed 2,250 lb (1,020.58 kg) for all trips combined.

Spiny Dogfish—whole fish would be retained for reproductive biology research. The spiny dogfish retained would not exceed 50 fish per month from each of the two stock areas (GOM, SNE/MA), or 1,200 fish total for all trips. The maximum weight on any trip would not exceed 390 lb (176.9 kg), and would not exceed 9,360 lb (4,245.62 kg) total for all trips.

Monkfish—whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 1,200 lb (544.31 kg) for all trips combined.

Cod—whole fish would be retained for tagging demonstrations and educational purposes. Cod to be retained would not exceed 15 fish per trip, or 60 cod for all trips. The maximum weight on any trip would not exceed 150 lb (68.04 kg) total weight, and would not exceed 600 lb (272.16 kg) for all trips combined.

Barndoor Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Thorny Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) whole weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Black Sea Bass—whole fish would be retained for examination of seasonal and latitudinal patterns in energy allocation. This effort is in support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per trip or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.40 kg) total weight, and would not exceed 1,000 lb (453.59 kg) total for all trips combined.

Atlantic wolffish—whole fish would be retained for maturity, fecundity, and life history research. Atlantic wolffish retained would not exceed 30 fish per month or 360 fish total for all trips. The maximum weight on any trip would not exceed 120 lb (54.4 kg) and would not exceed 3,000 lb (1,360.8 kg) total for all trips combined.

Cusk—whole fish would be retained for maturity, fecundity, and life history research. Cusk retained would not exceed 30 fish per month or 360 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg) and would not exceed 2,300 lb (1,043.3 kg) total for all trips combined.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 2012.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8374 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB151

New England Fishery Management Council (NEFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day meeting from Tuesday through Thursday, April 24–April 26, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 24th, Wednesday, April 25th and Thursday, April 26th beginning at 9 a.m. on Tuesday, and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355–1900; telephone: (860) 572–0731; fax: (860) 572–0328.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, April 24, 2012

Following introductions and any announcements, brief reports will be presented by the Council Chairman and Executive Director, NOAA Fisheries Regional Administrator (Northeast Region), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, as well as NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, and staff from the Vessel Monitoring Systems Operations and NOAA's Law Enforcement offices. During this period, the Council will receive an overview of activities related to the development of a Standard Bycatch Reporting Methodology amendment and the possible establishment of a joint Mid-Atlantic and New England Council Committee. That discussion will be followed by a review of any experimental fishery permit applications that have been made available since the January 2012 Council meeting.

Prior to a lunch break, the Council will discuss revising its list of management priorities for 2012 in the context of an Endangered Species Act listing for Atlantic sturgeon and the Council resources that may be required to address that issue.

Following a lunch break, the Council may revise its policies concerning procedures for advisory panel and plan development team operations. The Sea Scallop Committee will ask for approval of research priorities to be used in soliciting proposals funded through the NEFMC's sea scallop research set-aside program. During this report, the Northeast Fisheries Science Center will present information about future plans for the federal sea scallop survey, including the integration of Habcam (towed underwater camera) results with existing survey technologies. The Enforcement Committee will provide recommendations and ask for approval of comments related to: Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), NOAA's revised enforcement priorities, issues related to coral reef protection, sector landings monitoring and correspondence to the Secretary of Commerce requesting NOAA General Counsel/Northeast participation in

NEFMC Enforcement Committee meetings and the continuation of efforts to address the case backlog in New England. The day will conclude with a public listening session during which the Council will hold an informal question and answer session for stakeholders and the public. There also will be an opportunity for anyone to briefly comment on items relevant to Council business that is not otherwise listed on the agenda.

Wednesday, April 25, 2012

The second day of the meeting will begin with an overview of the status of Atlantic sturgeon and the implications of its Endangered Species Act listing for NEFMC fishery management plans, as well as other protected species-related updates. The Monkfish Committee will report next and summarize its discussions about potential remedies to the bycatch of Atlantic sturgeon in the monkfish fishery. There also will be an update on progress to develop Amendment 6 to the Monkfish FMP, an action that will include a catch share management alternative. Prior to a lunch break, representatives of the Northeast Fisheries Science Center will summarize the recent assessment and data updates to 13 Northeast groundfish stocks. The Council's Scientific and Statistical Committee will add to this information by reporting on its review of additional information relating to the status of Gulf of Maine cod. The committee also will provide recommendations for fishing year 2013 Acceptable Biological Catches for a number of stocks in the multispecies complex. The day will conclude with a report from the Groundfish Committee. That group will continue discussions about the management of Gulf of Maine cod, provide an update on the committee's efforts to develop a number of solutions and remedies concerning the sector management program and update the Council about other committee activities.

Thursday, February 2, 2012

The final day of the Council meeting will begin with a report from the Whiting Committee. It will review the recent public hearing comments and then approve final action on the management measures to be included in Amendment 19 to the Northeast Multispecies FMP. The action would establish annual catch limits and accountability measures for stocks of red hake, silver hake and offshore hake. The Habitat Committee will ask for approval of deep sea coral management alternatives to be analyzed further for potential inclusion in Essential Fish Habitat (EFH) Omnibus 2. Following a lunch break, there will be a report on the Spiny Dogfish Fishery Management Plan during which the Council will be asked to approve a range of alternatives for inclusion in the Draft Environmental Impact Statement for Amendment 3 to the plan. The document will be the subject of public review and further decision-making by the Mid-Atlantic and New England Councils. The day will conclude with an update on the development of Draft Amendment 5 to the Herring FMP and its Draft Environmental l Impact Statement including a review of comments received during the Amendment 5 public hearings held in March, 2012 and the Amendment 5 timeline and schedule for completion. The Council also may address any other outstanding business that related to this agenda.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during the meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 3, 2012.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8378 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA905

Marine Mammals; File No. 16599

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that that a permit has been issued to Dorian Houser, Ph.D., National Marine Mammal Foundation, 2240 Shelter Island Drive, #200, San Diego, CA 92106, to conduct scientific research on cetaceans stranded or in rehabilitation facilities in the U.S.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan (301)427–8401.

SUPPLEMENTARY INFORMATION: On January 18, 2012, notice was published in the **Federal Register** (77 FR 2512) that a request for a permit to conduct research on all species of stranded and rehabilitating cetaceans had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers may take auditory evoked potential measurements with suction cup sensors or subcutaneous pin electrodes on up to 15 individuals of each species of cetacean. Research will occur in waters or on beaches in the U.S. and in rehabilitation facilities in the U.S. The permit is valid through April 1, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: April 2, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8377 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment and Development Advisory Committee (NCADAC)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: This notice announces the selection of the authors for the report of the next National Climate Assessment by the National Climate Assessment and Development Advisory Committee (NCADAC). The next National Climate Assessment will consist of 28 chapters, each drafted by a set of Convening Lead Authors and Lead Authors. The list of these by chapter can be found on the Web page *http://www.globalchange.gov/what-we-do/assessment/people/nca-author-teams.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Designated Federal Official, National Climate Assessment and Development Advisory Committee, NOAA OAR, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov;* or visit the NCADAC Web site at *http://www.nesdis.noaa.gov/NCADAC/index.html.*

SUPPLEMENTARY INFORMATION: The National Climate Assessment and Development Advisory Committee was established in December 2010. The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.

Terry Bevels,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–8382 Filed 4–5–12; 8:45 am]

BILLING CODE 3510–KD–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/7/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 2/3/2012 (77 FR 5495–5496) and 2/10/2012 (77 FR 7137–7138), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to furnish the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Lubricant, 5-in-1 Penetrating Multipurpose oil, Biobased, Aerosol

NSN: 8030–00–NIB–0004—11 oz. net.
NSN: 8030–00–NIB–0005—18 oz. net.
NPA: The Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: General Services Administration, Kansas City, MO
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Portable USB 2.0 Hard Drives

NSN: 7045–01–568–9694—320G
NSN: 7045–01–568–9695—500G
NPA: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Custodial Services, McNary Lock and Dam, 82790 Devore Road, Umatilla, OR.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Dept of the Army, XU W071 ENDIST, Walla Walla, WA.
Service Type/Location: Grounds Maintenance, VA Nebraska-Western Iowa Health Care System, Grand Island Division, 2201 North Broadwell Avenue, Grand Island, NE.
NPA: Goodwill Specialty Services, Inc., Omaha, NE.
Contracting Activity: Department of Veterans Affairs, Nebraska Western-Iowa Health

Care System, Omaha, NE.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–8316 Filed 4–5–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities and to delete a service previously provided by such agency.

DATES: *Comments Must be Received on or Before:* 5/7/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the product listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agency listed:

Product

NSN: 3990–01–204–3009—Tie Down Strap, Cargo, Vehicle, 20′ × 2″.

NPA: Cottonwood, Incorporated, Lawrence, KS.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Naval Reserve Center, Kierney, NJ.

NPA: The First Occupational Center of New Jersey, Orange, NJ.

Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command, Norfolk, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–8315 Filed 4–5–12; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Legal Policy Board

AGENCY: Department of Defense, DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–102–3.50(d) (agency authority), the Department of Defense gives notice it is establishing the Defense Legal Policy Board (hereafter referred to as ''the Board'').

The Board is a discretionary federal advisory committee that shall provide the Secretary of Defense and the Deputy Secretary of Defense independent, informed advice, opinions, and recommendations concerning matters referred to the Board relating to legal and related legal policy matters within the Department of Defense.

The Board, at the direction of the Secretary of Defense, the Deputy Secretary of Defense, or the General Counsel of the Department of Defense, and according to DoD policy, shall examine and advise on legal and related legal policy matters within DoD, the achievement of DoD policy goals through legislation and regulations, and other assigned matters. In carrying out its duties, the Board shall consider, as appropriate:

a. Issues and policies relating to legal and related matters;

b. The interplay between laws and regulations, on the one hand, and the achievement of policy goals, on the other;

c. Identifying and evaluating the process for compliance with such laws and regulations;

d. Proposing necessary revisions to the Department's policy goals, and to laws, regulations or procedures intended to achieve such goals; and

e. Any other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the General Counsel of the Department of Defense.

The Secretary of Defense, the Deputy Secretary of Defense, or the General Counsel of the Department of Defense may act upon the Board's advice and recommendations. The Board shall be composed of not more than 15 members, who have distinguished backgrounds in law, investigations, military command, governmental organizations, or related fields.

Board members appointed by the Secretary of Defense, who are not full-

time or permanent part-time federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees.

Board members, with the approval of the Secretary of Defense, may serve a term of service on the Board of two years; however, no member, unless authorized by the Secretary of Defense, shall serve more than two consecutive terms of service on the Board. Regardless of the individual's approved term of service, all appointments to the Board shall be renewed on an annual basis.

The Secretary of Defense shall select and appoint the Board's chairperson from the total membership. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

Board members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Chairpersons of the Defense Business Board, the Defense Health Board, the Defense Policy Board, and the Defense Science Board shall serve as non-voting *ex officio* members of the Board. These *ex officio* appointments do not count toward the Board's total membership. The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups deemed necessary to support the Board.

These subcommittees, task groups, or working groups shall operate under the provisions of the FACA, the Government in the Sunshine Act of 1976, other governing Federal statutes and regulations, and governing DoD policies and procedures, including 41 CFR 102–3.35 and DoD Instruction 5105.04, sections E2.22, E3.2.2, and E3.12.

Such subcommittees, task groups, or working groups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of two years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer or Alternate Designated Federal Officer, in consultation with the Chairperson and the General Counsel of the Department of Defense. The estimated number of Board meetings is two per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Legal Policy Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Legal Policy Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Legal Policy Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Once the Board's charter has been filed contact information for the Defense Legal Policy Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Legal Policy Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8251 Filed 4–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Annual Updates to the Income Contingent Repayment (ICR) Plan Formula for 2011; William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.063.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2011. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their loans (Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans) under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and the interest rate applicable to each loan. Each year, we adjust the formula for calculating a borrower's ICR payment to reflect changes due to inflation. This notice contains the adjusted income percentage factors for 2011, examples of how the calculation of the monthly ICR amount is performed, a constant multiplier chart for use in performing the calculations, and charts showing sample repayment amounts based on the adjusted ICR plan formula. The adjustments for the ICR plan formula contained in this notice are effective for the period from July 1, 2011 to June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 1st St. NE., Room 114I1, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print,

audiotape, or compact diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in this section of the notice.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans under the ICR plan. This notice contains the following four attachments:

- *Attachment 1—Income Percentage Factors for 2011*
- *Attachment 2—Constant Multiplier Chart for Use in Calculating the Monthly ICR Amount*
- *Attachment 3—Examples of the Calculations of Monthly Repayment Amounts*
- *Attachment 4—Charts Showing Sample Repayment Amounts for Single and Married Borrowers*

In Attachment 1, we have updated the income percentage factors to reflect changes based on inflation. Specifically, we have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all urban consumers from December 2010 to December 2011. In Attachment 2, we provide a constant multiplier chart for a 12-year loan amortization. Further, in Attachment 3, we provide examples of monthly repayment amount calculations. Finally, in Attachment 4, we provide two charts that show sample repayment amounts for single and married or head-of-household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors reflected in Attachment 1 may cause a borrower's payments to be lower than they were in prior years (even if the borrower's income remains the same as the prior year). However, the revised repayment amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087 *et seq.*

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

Attachment 1—Income Percentage Factors for 2011

INCOME PERCENTAGE FACTORS FOR 2011

[Based on annual income]

Single		Married, filing jointly or separately/head of household	
Income	Factor (percent)	Income	Factor (percent)
$10,249	55.00	$10,249	50.52
14,102	57.79	16,171	56.68
18,146	60.57	19,271	59.56
22,280	66.23	25,192	67.79
26,230	71.89	31,210	75.22
31,210	80.33	39,201	87.61
39,201	88.77	49,164	100.00
49,165	100.00	59,132	100.00
59,132	100.00	74,082	109.40
71,069	111.80	98,991	125.00
91,001	123.50	133,867	140.60
128,887	141.20	187,220	150.00
147,781	150.00	305,931	200.00
263,224	200.00	.....	.....

Attachment 2—Constant Multiplier Chart for Use in Calculating the Monthly ICR Amount

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest rate (percent)	Annual constant multiplier
3.500	0.102174
4.000	0.105063
4.500	0.108001
5.000	0.110987
5.500	0.114021

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION—Continued

Interest rate (percent)	Annual constant multiplier
6.000	0.117102
6.800	0.122130
7.000	0.123406
7.900	0.129237
8.000	0.129894
8.250	0.131545

Attachment 3—Examples of the Calculations of Monthly Repayment Amounts

General notes about the examples in this attachment:

- The interest rates used in the examples are for illustration only. Actual interest rates vary depending on loan type and when a loan was first disbursed.
- In the examples, the Poverty Guideline amounts used are from the 2011 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for the 48 contiguous States

and the District of Columbia, as published in the **Federal Register** on January 20, 2011 (76 FR 3637). Different Poverty Guidelines apply to residents of Alaska and Hawaii.

• The ''constant multiplier'' included in each example is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. Refer to the constant multiplier chart provided in Attachment 2 to this notice to determine the constant multiplier that should be used for a specific interest rate. If an interest rate is not listed in the constant multiplier chart in Attachment 2, use the next highest rate for estimation purposes.

• All examples use an income percentage factor corresponding to the borrower's adjusted gross income (AGI). If the AGI is not listed in the income percentage factors table in Attachment 1, calculate the applicable income percentage factor for the AGI by following the instructions under the Interpolation heading later in this attachment.

• For married borrowers, the outstanding balance on the loans of each borrower and both borrowers' AGIs are added together to determine the ICR payment amount. The amount of each payment applied to each borrower's Direct Loan debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance. Each borrower is billed separately. For example, if a married couple has a total outstanding Direct Loan debt of $60,000, $40,000 of which belongs to one spouse, and $20,000 of which belongs to the other spouse, 67 percent of the monthly ICR payment would be apportioned to the spouse with the outstanding debt of $40,000, with the remaining 33 percent of the monthly ICR payment being apportioned to the spouse with $20,000 of debt. To take advantage of a joint ICR payment, married couples need not file taxes jointly; they may file separately and subsequently provide the other spouse's tax information.

Example 1. This example assumes that the borrower is a single with no dependents, and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on these loans is 6.80 percent, and the borrower has an AGI of $39,201.

Step 1: Determine the total annual payment amount based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the loan balance by the constant multiplier for the applicable interest rate. In this example, the interest rate is 6.80 percent, for which the constant multiplier is 0.122130.

• $0.122130 \times \$15,000 = \$1,831.95$

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to the AGI and then divide the result by 100:

• $88.77 \times \$1,831.95 \div 100 = \$1,626.22$

Step 3: Determine 20 percent of the borrower's discretionary income (discretionary income is AGI minus the U.S. Department of Health and Human Services (HHS) Poverty Guideline amount for the borrower's family size and state of residence). To do this, subtract the Poverty Guideline amount for a family of one, for this example, from the borrower's AGI and multiply the result by 20 percent:

• $\$39,201 - \$10,890 = \$28,311$
• $\$28,311 \times 0.20 = \$5,662.20$

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be the annual payment amount. In this example, the borrower will be paying the amount calculated under Step 2 ($1,626.22). To determine the monthly repayment amount, divide the annual amount by 12.

• $\$1,626.22 \div 12 = \$135.52$

Example 2. In this example, the borrower is married and has no dependents, other than a spouse. The borrower has a Direct Loan balance of $10,000, and the spouse has a Direct Loan balance of $15,000. The interest rate on all of the loans is 6.80 percent.

The borrower and spouse have a combined AGI of $74,082 and are repaying their loans jointly under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth bullet under the heading entitled ''General notes about the examples'' in this attachment).

Step 1: Add the borrower's and the borrower's spouse's Direct Loan balances together to determine their combined aggregate loan balance:

• $\$10,000 + \$15,000 = \$25,000$

Step 2: Determine the combined total annual payment amount for these borrowers based on what the both borrowers would pay over 12 years using standard amortization. To do this, multiply the combined loan balance by the constant multiplier for the applicable interest rate. In this example, the interest rate is 6.80 percent, for which the constant multiplier is 0.122130.

• $0.122130 \times \$25,000 = \$3,053.25$

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table in Attachment 1 that corresponds to the borrower's and the borrower's spouse's AGI and then divide the result by 100:

• $109.40 \times \$3,053.25 \div 100 = \$3,340.26$

Step 4: Determine 20 percent of discretionary income. To do this, subtract the Poverty Guideline amount for a family of two, in this example, from the combined AGI and multiply the result by 20 percent:

• $\$74,082 - \$14,710 = \$59,372$
• $\$59,372 \times 0.20 = \$11,874.40$

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be the annual payment amount for the borrower and the borrower's spouse. The borrower and the borrower's spouse will jointly pay the amount calculated under Step 3 ($3,340.26). To determine the monthly repayment amount, divide the annual amount by 12.

• $\$3,340.26 \div 12 = \$278.36$

Example 3. This example assumes that the borrower is single with no dependents and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on all of the loans is 6.80 percent, and the borrower's AGI is $31,210.

Step 1: Determine the total annual payment amount based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the loan balance by the constant multiplier for the applicable interest rate. In this example, the interest rate is 6.80 percent, for which the constant multiplier is 0.122130.

• $0.122130 \times \$15,000 = \$1,831.95$

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table in Attachment 1 that corresponds to the borrower's income and then divide the result by 100:

• $80.33 \times \$1,831.95 \div 100 = \$1,471.61$

Step 3: Determine 20 percent of discretionary income (discretionary income is the borrower's AGI minus the HHS Poverty Guideline amount for the borrower's family size). To do this, subtract the Poverty Guideline amount for a family of one, in this example, from AGI and multiply the result by 20 percent:

• $\$31,210 - \$10,890 = \$20,320$
• $\$20,320 \times 0.20 = \$4,064$

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be the annual payment amount. In this example, the borrower will be paying the amount calculated under Step 2 ($1,471.61). To determine the monthly repayment amount, divide the annual amount by 12.

• $\$1,471.61 \div 12 = \$122.63$

Example 4. In this example, the borrower is married and has no dependents, other than the spouse. The borrower and spouse have a combined AGI of $39,201 and are repaying their loans under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth bullet under the heading entitled ''General notes about the examples'' in this attachment). The borrower has a Direct Loan balance of $10,000, $5,000 of which is at an interest rate of 6.80 percent and $5,000 of which is at an interest rate of 7.0 percent, and the spouse has a Direct Loan balance of $5,000 at an interest rate of 6.80 percent and $10,000 of which is at an interest rate of 7.0 percent.

Step 1: Add the borrower's and the borrower's spouse's Direct Loan balances that have the same interest rate together to determine combined aggregate loan balances by interest rate:

• 6.8 percent: $\$5,000 + \$5,000 = \$10,000$
• 7.0 percent: $\$5,000 + \$10,000 = \$15,000$

Step 2: Determine the annual payment based on what would be paid over 12 years using standard amortization for each interest rate-based group of combined aggregate loan balances. To do this, multiply each group of combined aggregate loan balances by the constant multiplier for the applicable interest rate. For 6.80 percent, the constant multiplier is 0.122130. For 7.0 percent, the constant multiplier is 0.123406.

• $0.122130 \times \$10,000 = \$1,221.30$

• 0.123406 × $15,000 = $1,851.09

Step 3: Add the products of Step 2 together, multiply that total by the income percentage factor shown in the income percentage factors table in Attachment 1 that corresponds to the borrower's and the borrower's spouse's combined AGI, and then divide the result by 100:

• 87.61 × $3,072.39 ÷ 100 = $2,691.72

Step 4: Determine 20 percent of discretionary income. To do this, subtract the Poverty Guideline amount for a family of two, in this example, from the combined AGI and multiply the result by 20 percent:

• $39,201 − $14,710 = $24,491

• $24,491 × 0.20 = $4,898.20

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be the annual payment amount. In this example, the borrower and the borrower's spouse will jointly pay the amount calculated under Step 3 ($2,691.72). To determine the monthly repayment amount, divide the annual amount by 12.

• $2,691.72 ÷ 12 = $224.31

Interpolation. If the borrower's income is not included on the income percentage factor table, calculate the income percentage factor through interpolation. For example, assume that the borrower is single with income of $30,000.

Step 1: Find the closest income listed that is less than $30,000 and the closest income listed that is greater than $30,000.

Step 2: Subtract the lower amount from the higher amount (for this discussion, we will call the result the ''income interval''):

• $31,210 − $26,230 = $4,980

Step 3: Determine the difference between the two income percentage factors that correspond to the incomes used in Step 2 (for this discussion, we will call the result the ''income percentage factor interval''):

• 80.33 percent − 71.89 percent = 8.44 percent

Step 4: Subtract from the borrower's income the closest income shown on the chart that is less than the borrower's income of $30,000:

• $30,000 − $26,230 = $3,770

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

• $3,770 ÷ $4,980 = 0.757

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

• 8.44 percent × 0.757 = 6.389 percent

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $30,000 in income:

• 6.389 percent + 71.89 percent = 78.28 percent (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

Attachment 4—Charts Showing Sample Repayment Amounts for Single and Married Borrowers

BILLING CODE 4000–01–P

Sample First-Year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels																			
	Initial Debt																		
Income	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$60,000	$70,000	$80,000	$90,000	$100,000
$5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$12,500	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
$15,000	30	45	59	69	69	69	69	69	69	69	69	69	69	69	69	69	69	69	69
$17,500	31	46	61	76	92	107	110	110	110	110	110	110	110	110	110	110	110	110	110
$20,000	32	48	64	80	96	112	128	145	152	152	152	152	152	152	152	152	152	152	152
$22,500	34	51	68	85	102	119	135	152	169	194	194	194	194	194	194	194	194	194	194
$25,000	36	54	71	89	107	125	143	161	178	214	235	235	235	235	235	235	235	235	235
$30,000	40	60	80	100	120	139	159	179	199	239	279	319	319	319	319	319	319	319	319
$35,000	43	64	86	107	129	150	172	193	215	257	300	343	386	402	402	402	402	402	402
$40,000	46	68	91	114	137	160	183	205	228	274	319	365	411	456	485	485	485	485	485
$45,000	48	73	97	121	145	170	194	218	242	291	339	388	436	485	569	569	569	569	569
$50,000	51	76	102	127	153	178	204	229	254	305	356	407	458	509	611	652	652	652	652
$60,000	51	77	103	128	154	180	205	231	257	308	359	411	462	513	616	719	819	819	819
$70,000	56	85	113	141	169	197	225	254	282	338	394	451	507	564	676	789	902	985	985
$80,000	60	89	119	149	179	208	238	268	298	357	417	476	536	596	715	834	953	1072	1152
$90,000	63	94	125	156	188	219	250	281	313	375	438	500	563	625	751	876	1001	1126	1251
$100,000	65	97	130	162	195	227	260	292	325	390	455	520	585	650	780	910	1040	1170	1300
Sample repayment amounts are based on an interest rate of 6.80%																			

Sample First-Year Monthly Repayment Amounts for a Married or Head-of-Household Borrower at Various Income and Debt Levels																			
	Family Size = 3																		
Income	Initial Debt																		
$5,000	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$60,000	$70,000	$80,000	$90,000	$100,000
$6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$12,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$15,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$17,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
$20,000	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
$22,500	33	49	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66
$25,000	34	52	69	86	103	108	108	108	108	108	108	108	108	108	108	108	108	108	108
$30,000	38	56	75	94	113	131	150	169	188	191	191	191	191	191	191	191	191	191	191
$35,000	41	62	83	103	124	144	165	186	206	248	275	275	275	275	275	275	275	275	275
$40,000	45	68	90	113	135	158	180	203	225	271	316	358	358	358	358	358	358	358	358
$45,000	48	72	97	121	145	169	193	217	241	290	338	386	434	441	441	441	441	441	441
$50,000	51	76	102	127	153	178	204	229	254	305	356	407	458	509	525	525	525	525	525
$60,000	51	77	102	128	153	179	205	230	256	307	358	409	460	512	614	691	691	691	691
$70,000	54	82	109	136	163	190	217	245	272	326	381	435	489	544	652	761	858	858	858
$80,000	58	86	115	144	173	201	230	259	288	345	403	460	518	576	691	806	921	1025	1025
$90,000	61	91	121	152	182	213	243	273	304	364	425	486	547	607	729	850	972	1093	1191
$100,000	64	96	128	160	192	223	255	287	319	383	447	511	575	638	766	894	1021	1149	1277
Sample repayment amounts are based on an interest rate of 6.80%																			

[FR Doc. 2012–8225 Filed 4–5–12; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research and Special Education Research Grant Programs; Correction

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice; correction.

Overview Information

Education Research and Special Education Research Grant Programs. Applications for New Awards. CFDA Nos: 84.305A, 84.305B, 84.305D, 84.305E, 84.305H, 84.324A, 84.324B, and 84.324D.

SUMMARY: On March 6, 2012, the Institute of Education Sciences in the U.S. Department of Education published in the **Federal Register** (77 FR 13297) a notice inviting applications for new awards for fiscal year 2013 for the Education Research and Special Education Research Grant Programs. This notice makes several corrections to the March 6, 2012, notice inviting applications (March 6 NIA).

SUPPLEMENTARY INFORMATION: In the March 6 NIA, the Department announced 13 competitions to be held under the Education Research and Special Education Research Grant Programs. The chart at the end of the March 6 NIA (see 77 FR 13297, 13302–13303) provided competition-specific information, including the dates application packages would be available as well as the deadline dates for applications. The entries in the chart corresponding to the following three competitions contained errors: Research on Statistical and Research Methodology in Education (CFDA 84.305D), Evaluation of State and Local Education Programs and Policies (CFDA 84.305E), and Researcher-Practitioner Partnerships in Education Research (CFDA 84.305H). Following is a description of the errors along with the correct information:

For the CFDA 84.305D competition:

We indicated that the application package would be available on July 19, 2012; however, the correct date the application package will be available is April 19, 2012.

We also indicated that that the deadline for transmittal of applications would be September 20, 2012; however, the correct deadline is June 21, 2012.

For the CFDA 84.305E competition:

We indicated that the application package would be available on April 19, 2012; however, the correct date the application package will be available is July 19, 2012.

We also indicated that that the deadline for transmittal of applications would be June 21, 2012; however, the correct deadline is September 20, 2012.

For the CFDA 84.305H competition:

We indicated that the estimated range of awards was $100,000 to $400,000; however, the correct range is $50,000 to $200,000.

We also incorrectly indicated that the project period for this grant would be up to 3 years; the corrected project period is up to 2 years.

For these reasons, we correct the chart containing this information. On pages 13302–13303 of the March 6 NIA, the chart is corrected to appear as follows:

INSTITUTE OF EDUCATION SCIENCES

[FY 2013 Grant Competitions To Support Education Research and Special Education Research]

CFDA number and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
National Center for Education Research (NCER)					
84.305A–1 Education Research: ▪ Reading and Writing ▪ Mathematics and Science Education ▪ Cognition and Student Learning ▪ Effective Teachers and Effective Teaching ▪ Social and Behavioral Context for Academic Learning ▪ Improving Education Systems: Policies, Organization, Management, and Leadership. ▪ Early Learning Programs and Policies ▪ English Learners ▪ Postsecondary and Adult Education ▪ Education Technology	April 19, 2012	June 21, 2012	$100,000 to $1,000,000	Up to 5 years	Emily Doolittle *Emily.Doolittle@ed.gov*
84.305A–2 Education Research:					

INSTITUTE OF EDUCATION SCIENCES—Continued

[FY 2013 Grant Competitions To Support Education Research and Special Education Research]

CFDA number and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
▪ Reading and Writing ▪ Mathematics and Science Education ▪ Cognition and Student Learning ▪ Effective Teachers and Effective Teaching ▪ Social and Behavioral Context for Academic Learning ▪ Improving Education Systems: Policies, Organization, Management, and Leadership. ▪ Early Learning Programs and Policies ▪ English Learners ▪ Postsecondary and Adult Education ▪ Education Technology	July 19, 2012	September 20, 2012.	$100,000 to $1,000,000	Up to 5 years	Emily Doolittle *Emily.Doolittle@ed.gov*
84.305B Research Training Programs in the Education Sciences: ▪ Postdoctoral Research Training Program. ▪ Researcher and Policymaker Training Program	July 19, 2012	September 20, 2012.	$50,000 to $300,000	Up to 5 years	Meredith Larson *Meredith.Larson@ed.gov*
84.305D Research on Statistical and Research Methodology in Education.	April 19, 2012	June 21, 2012	$40,000 to $300,000	Up to 3 years	Phill Gagne *Phill.Gagne@ed.gov*
84.305E Evaluation of State and Local Education Programs and Policies.	July 19, 2012	September 20, 2012.	$200,000 to $1,000,000	Up to 5 years	Allen Ruby *Allen.Ruby@ed.gov*
84.305H Researcher-Practitioner Partnerships in Education Research.	July 19, 2012	September 20, 2012.	$50,000 to $200,000	Up to 2 years	Allen Ruby *Allen.Ruby@ed.gov*
National Center for Special Education Research (NCSER)					
84.324A–1 Special Education Research: ▪ Early Intervention and Early Learning in Special Education ▪ Reading, Writing, and Language Development ▪ Mathematics and Science Education ▪ Social and Behavioral Outcomes to Support Learning ▪ Transition Outcomes for Special Education Secondary Students ▪ Cognition and Student Learning in Special Education.	April 19, 2012	June 21, 2012	$100,000 to $1,000,000	Up to 5 years	Jacquelyn Buckley *Jacquelyn.Buckley@ed.gov*

INSTITUTE OF EDUCATION SCIENCES—Continued

[FY 2013 Grant Competitions To Support Education Research and Special Education Research]

CFDA number and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
▪ Professional Development for Teachers and Related Services Providers ▪ Special Education Policy, Finance, and Systems ▪ Autism Spectrum Disorders ▪ Technology for Special Education ▪ Families of Children with Disabilities					
84.324A–2 Special Education Research: ▪ Early Intervention and Early Learning in Special Education ▪ Reading, Writing, and Language Development ▪ Mathematics and Science Education ▪ Social and Behavioral Outcomes to Support Learning ▪ Transition Outcomes for Special Education Secondary Students ▪ Cognition and Student Learning in Special Education. ▪ Professional Development for Teachers and Related Services Providers ▪ Special Education Policy, Finance, and Systems ▪ Autism Spectrum Disorders ▪ Technology for Special Education ▪ Families of Children with Disabilities	July 19, 2012	September 20, 2012.	$100,000 to $1,000,000	Up to 5 years	Jacquelyn Buckley *Jacquelyn.Buckley@ed.gov*
84.324B Special Education Research Training: ▪ Early Career Development and Mentoring Program in Special Education Research.	July 19, 2012	September 20, 2012.	$50,000 to $100,000	Up to 5 years	Amy Sussman *Amy.Sussman@ed.gov*
84.324D Accelerating the Academic Achievement of Students with Disabilities Research Initiative.	July 19, 2012	September 20, 2012.	$1,000,000 to $2,000,000	Up to 5 years	Kristen Lauer *Kristen.Lauer@ed.gov*

*These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

Note: If you use a telecommunications device for the deaf (TDD) or a test telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

Program Authority: 20 U.S.C. 9501 *et seq.*

VIII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart and in the RFA package. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the appropriate program contact person listed in the chart.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 3, 2012.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2012–8388 Filed 4–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: U.S. Department of Education, Institute of Education Sciences.

ACTION: Notice of an Open Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

DATES: April 25, 2012.

TIME: 4 p.m. to 5 p.m. EDT.

ADDRESSES: 80 F Street NW., Room 100, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Monica Herk, Executive Director, National Board for Education Sciences, 555 New Jersey Ave. NW., Room 602 K, Washington, DC, 20208; phone: (202) 208–3491; fax: (202) 219–1466; email: *Monica.Herk@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002(ESRA), 20 U.S.C 9516. The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On April 25, 2012, starting at 4 p.m., the Board will convene via teleconference in order to discuss and come to agreement on the Board's 2012 Annual Report.

Members of the public are invited to listen to the teleconference live in Room 100, 80 F Street NW., Washington, DC 20001.

There will not be an opportunity for public comment. However, members of the public are encouraged to submit written comments related to NBES to Monica Herk (see contact information above). A final agenda will be available from Monica Herk (see contact information above) on April 9 and will be posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.* Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Monica Herk no later than April 9. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Board proceedings and are available for public inspection at 555 New Jersey Ave. NW., Room 602 K, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

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John Q. Easton,

Director Institute of Education Sciences.

[FR Doc. 2012–8253 Filed 4–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–210–C]

Application to Export Electric Energy; PPL EnergyPlus, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: PPL EnergyPlus, LLC. (PPL EnergyPlus) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before May 7, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On July 19, 1999, the Department of Energy (DOE) issued Order No. EA–210 authorizing PPL EnergyPlus to transmit electric energy from the United States to Canada as a power marketer for a two-year term. DOE subsequently renewed that authority two additional times in Order No. EA–210–A on November 13, 2001 and in Order No. EA–210–B on August 17, 2007. The current export authority in Order No. EA–210–B will expire on August 17, 2012. On March 16, 2012, PPL EnergyPlus filed an

application with DOE for renewal of that authority for an additional five-year term.

In its application, PPL EnergyPlus states that it ''does not own any physical electric generation or transmission facilities in the U.S. and does not have any franchised service territory in the U.S.'' Therefore, the electric power proposed to be exported to Canada will be surplus to the needs of the entities selling the power to PPL EnergyPlus. The application also indicates that PPL EnergyPlus is a power marketer authorized by the Federal Energy Regulatory Commission to sell energy, capacity, and specified ancillary services at market-based rates.

The existing international transmission facilities to be utilized by PPL EnergyPlus have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the PPL EnergyPlus application to export electric energy to Canada should be clearly marked with OE Docket No. 210–C. An additional copy is to be filed directly with Jesse A. Dillon, Esq., Senior Counsel, PPL Services Corporation, Two North Ninth Street, Allentown, PA 18101 AND Sandra E. Rizzo, Esq., Bracewell & Giuliani LLP, 2000 K Street NW., Suite 500, Washington, DC 20006. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on April 2, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–8330 Filed 4–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Recovery Act projects funded by EERE for pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

DATES: Effective Date: 03/27/2012.

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a ''determination of inapplicability'' (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (''nonavailability''). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe, is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above item, when used on eligible EERE Recovery Act-funded projects, qualifies for the ''nonavailability'' waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result,

in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the product in this current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the good included in this waiver is not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for the item have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

Pre-insulated hot water district energy piping manufactured as a system to meet quality standards (EN Standards, ISO 9001, and ISO 14001) that test all aspects of the individual components (insulation cell structure/water absorption/compression resistance) plus ensure compliance of the finished system to five rigorous tests: axial and tangential shear strength, aged shear strength, creep and impact resistance. This degree of diligence is not imposed on thermal distribution piping manufactured as individual parts, and as a result products produced as a system to meet the above referenced standards better predict overall long term behavior of the system under sustained high temperature, resulting in lower life cycle cost and greater system efficiency. Because there is not a US manufacturer who makes a complete system, the components (pre-insulated valves, fittings, bends, etc.) of a hot water district energy system, have not been tested together to ensure that the entire system behaves in the same manner.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redelegation Order 00–002–01E, with respect to Recovery Act projects funded by EERE, I hereby issue a ''determination of inapplicability'' (a waiver under the Recovery Act Buy American provision) for: Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on March 27, 2012, one (1) nationwide categorical waiver of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC, on March 27, 2012.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2012–8329 Filed 4–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–98–000]

Northwest Pipeline GP; Notice of Application

Take notice that on March 29, 2012, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in the above referenced docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate its Kemmerer Mine Relocation Project (Project) located in Lincoln County, Wyoming. Northwest states that the proposed Project consists of installing approximately 2.4 miles each of 26-inch diameter and 30-inch diameter pipelines to permanently route Northwest's existing 26-inch diameter and 30-inch diameter pipelines away from an adjacent surface coal mine west of Kemmerer, Wyoming. Northwest also proposes to abandon by removal approximately 0.9 miles of 30-inch diameter pipeline, abandon by place approximately 0.9 mile each of existing 26-inch diameter and 30-inch diameter pipelines, and abandon in place approximately 0.1 mile of 30-inch diameter pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Pam Barnes, Manager Certificates and Tariffs, Northwest Pipeline GP, 295 Chipeta Way, Salt Lake City, Utah 84108, at (801) 584–6857.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 6, 2012.

Dated: March 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8267 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2710–057; 2712–074]

Black Bear Hydro Partners, LLC; Notice of Application Accepted for Filing, Ready for Environmental Analysis, Soliciting Motions to Intervene, Protests, Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Licenses.

b. *Project Nos.:* 2710–057 and 2712–074.

c. *Date Filed:* May 18, 2011, supplemented on October 7, 2011, January 20, 2012, and March 14, 2012.

d. *Applicant:* Black Bear Hydro Partners, LLC.

e. *Name of Projects:* Orono Project 2710–057; Stillwater Project 2712–074.

f. *Location:* The projects are located on the Stillwater Branch of the Penobscot River in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Scott D. Hall, Black Bear Hydro Partners, LLC, P.O. Box 276, Davenport Street, Milford, ME 04461, (207) 827–2247.

i. *FERC Contact:* Ms. Rachel Price at (202) 502–8907 or *Rachel.Price@ferc.gov.*

j. Deadline for filing motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project numbers (P–2710–057 and/or P–2712–074) on any motions, protests, comments, recommendations, terms and conditions, or fishway prescriptions filed.

k. *Description of Application:* At the Orono Project the applicant proposes to: construct and operate a second powerhouse containing three turbine-generator units with an installed capacity of 3.738 megawatts (MW); increase the normal maximum surface elevation of the reservoir by 0.6 feet; replace the existing downstream fish passage facility and install a new fish trapping facility (required by ordering paragraphs D and E of the project license); and extend the license term by three years so that it would expire in 2048. At the Stillwater Project the applicant proposes to: construct and operate a second powerhouse containing three turbine-generator units with an installed capacity of 2.229 MW; new downstream fish passage and upstream eel passage facilities; and extend the license term by 10 years so that it would expire in 2048.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online

at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Motions to Intervene, Protests, and Comments:* Anyone may submit a motion to intervene, protest, or comments in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene, protests, or comments must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must: (1) Bear in all capital letters the title ''MOTION TO INTERVENE,'' ''PROTEST,'' ''COMMENTS, '' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening, protesting, or commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene, protests, or comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8266 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–538–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CEGT LLC—Revenue Crediting—May 2012 to be effective 5/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5108.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–539–000.
Applicants: Elba Express Company, L.L.C.
Description: 2012 Annual Interruptible Revenue Crediting Report of Elba Express Company, L.L.C.
Filed Date: 3/29/12.
Accession Number: 20120329–5116.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–540–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Texla 39715 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5135.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–541–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Sequent 39725 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5138.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–542–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Capacity Release Negotiated Rate HK 37731 to Spark 39714 to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5139.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–543–000.
Applicants: Gulf South Pipeline Company, LP.
Description: ONEOK 34951 to BG 39727 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5142.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–544–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Encana 37663–4 Amendment to Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5146.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–545–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37733 to Texla 39747 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5155.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–546–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Chesapeake 34683 to Louis Dreyfus 39749 Negotiated Rate and Capacity Release Agreement Filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5157.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–547–000.
Applicants: Gulf South Pipeline Company, LP.
Description: ONEOK 34951 to BG Energy 39751 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5158.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–548–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Antero 2 to Tenaska 452 Capacity Release Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5159.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–549–000.
Applicants: Natural Gas Pipeline Company of America, LLC.
Description: MidAmerican Negotiated Rate to be effective 4/1/2012.

Filed Date: 3/29/12.
Accession Number: 20120329–5187.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–550–000.
Applicants: Ruby Pipeline, LLC.
Description: Headstation Pooling Service to be effective 5/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5190.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–551–000.
Applicants: ANR Pipeline Company.
Description: DTCA 2012 to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5048.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–552–000.
Applicants: Northern Border Pipeline Company.
Description: CSU Fuel Filing 2012 to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5049.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–553–000.
Applicants: Northern Border Pipeline Company.
Description: BP Canada Energy Negotiated Rate Agreements to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5057.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–554–000.
Applicants: Southern Natural Gas Company, LLC.
Description: Clean-up Filing—2012 to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5063.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–555–000.
Applicants: Northern Natural Gas Company.
Description: 20120330 Negotiated Rate to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5079.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–556–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: submit its filing per 154.204: Negotiated Rates—AGL, PUH, VNG to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5088.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–557–000.
Applicants: Gulf Crossing Pipeline Company, LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Creditworthiness to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5116.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–558–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: submits tariff filing per 154.204: CEGT, LLC—April 2012 Negotiated Rate Filing to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5118.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–559–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendments to Negotiated Rate Agreements—CenterPoint 35483, 35484, 35485 to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5129.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–560–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: QEP 36601–9 Amendment to Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 03/30/2012.
Accession Number: 20120330–5138.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2012.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP08–350–006.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. Annual Report—Non-HCA Pipeline and Storage Lateral Integrity Expenses.
Filed Date: 3/29/12.
Accession Number: 20120329–5117.
Comments Due: 5 p.m. ET 4/10/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–8306 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–561–000.
Applicants: Rockies Express Pipeline LLC.
Description: Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.
Filed Date: 3/30/12.
Accession Number: 20120330–5140.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–562–000.
Applicants: Gulf South Pipeline Company, LP.
Description: QEP 37657–15 Amendment to Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5142.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–563–000.
Applicants: Gulf South Pipeline Company, LP.
Description: QEP 37657–14 Amendment to Negotiated Rate Agreement filing to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5158.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–564–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Tenaska 39395–2 Amendment to Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5164.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: RP12–565–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Tenaska 39396–2 Amendment to Negotiated Rate Agreement to be effective 4/1/2012.

Filed Date: 3/30/12.
Accession Number: 20120330–5168.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–566–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits its cashout report for the period November 2010 through October 2011.
Filed Date: 3/30/12.
Accession Number: 20120330–5170.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–567–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37367 to Sequent 39754 & 39755 Capacity Release Negotiated Rate Agreement filing to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5175.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–568–000.
Applicants: Vector Pipeline L.P.
Description: Annual Fuel Use Report of Vector Pipeline L.P.
Filed Date: 3/30/12.
Accession Number: 20120330–5176.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–569–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37367 to Sequent 39756 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5178.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–570–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC's Expansion Fuel Filing.
Filed Date: 3/30/12.
Accession Number: 20120330–5180.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–571–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Releasable Secondary Capacity to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5183.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–572–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: Negotiated Rate 2012–03–30 Patara to be effective 4/1/2012 under RP12–572 Filing Type: 570.
Filed Date: 3/30/12.
Accession Number: 20120330–5212.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–573–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Negotiated Rate Service Agreement—Contract Nos. 130060, 130067 and 130073 to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5271
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–574–000.
Applicants: ANR Pipeline Company.
Description: Chevron FTS–1 Agreement to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5277.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–575–000.
Applicants: Bison Pipeline LLC.
Description: Bison Pipeline LLC Company Use Gas Annual Report.
Filed Date: 3/30/12.
Accession Number: 20120330–5278.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–576–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: ConEd Release to DTE 2012–04–01 to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5341.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–577–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: VPEM Negotiated Rate—contract 510294 and 510295 to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5348.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–578–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiated Rate Service Agreement—Hayden Harper to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5358.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–579–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 03/30/12 Negotiated Rates—ConocoPhillips Company to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5380.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–580–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.L.C.
Description: CPG Annual FL&U to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5381.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–581–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy-EQT Capacity Release Waiver Request to be effective N/A.
Filed Date: 3/30/12.
Accession Number: 20120330–5419.
Comments Due: 5 p.m. ET 4/9/12.
Docket Numbers: RP12–582–000.
Applicants: Colorado Interstate Gas Company LLC.
Description: NNT Balancing Point Enhancement to be effective 5/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5435.
Comments Due: 5 p.m. ET 4/11/12.
Docket Numbers: RP12–583–000.
Applicants: Texas Gas Transmission, LLC.
Description: Negotiated Rate Agreement Filing—TVA 32147 to be effective 4/1/2012.
Filed Date: 4/2/12.
Accession Number: 20120402–5063.
Comments Due: 5 p.m. ET 4/16/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–571–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Amendment to Filing—Releaseable Secondary Capacity to be effective 8/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5446.
Comments Due: 5 p.m. ET 4/11/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

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eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8307 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–517–000.
Applicants: Questar Pipeline Company.
Description: Statement of Negotiated Rates—V4.0.0—TME to be effective 4/2/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5071.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–518–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate Filing—United Energy to be effective 4/1/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5084.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–519–000.
Applicants: Horizon Pipeline Company, LLC.
Description: Natural Negotiated Rate Filing to be effective 4/1/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5147.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–520–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Create Enhanced Firm Transportation (EFT) Service to be effective 5/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5020.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–521–000.
Applicants: Texas Gas Transmission, LLC.
Description: Cross Timbers Amendment #2 to Negotiated Rate Agreement 29061 to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5021.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–522–000.
Applicants: Texas Gas Transmission, LLC.
Description: Cross Timbers Amendment to Negotiated Rate Agreement 31116 to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5022.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–523–000.
Applicants: Gulf South Pipeline Company, LP
Description: Sequent 39404 Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5023.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–524–000.
Applicants: Gulf South Pipeline Company, LP
Description: Sequent 39411 Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5024.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–525–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Sequent 39412 Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5025.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–526–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Sequent 39413 Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5026.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–527–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Tenaska 39395 Negotiated Rate Agreement Filing to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5027.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–528–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Tenaska 39396 Negotiated Rate Agreement Filing to be effective 4/1/2012 .
Filed Date: 3/28/12.
Accession Number: 20120328–5028.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–529–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate Filing—CIMA to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5061.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–530–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate Filing—MIECO to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5062.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–531–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits its Annual Gas Compressor Fuel Report.
Filed Date: 3/28/12.
Accession Number: 20120328–5078.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–532–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate—Shell to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5027.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–533–000.
Applicants: Texas Eastern Transmission, LP.
Description: NJRES Negotiated Rate—effective 4–1–2012 to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5030.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–534–000.
Applicants: Pine Needle LNG Company, LLC.
Description: Pine Needle 2012 Fuel Tracker and Electric Power Filing to be effective 5/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5031.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–535–000.
Applicants: Midwestern Gas Transmission Company.
Description: ProLiance Energy Company FA0845 to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5032.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–536–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate—Concord to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5068.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: RP12–537–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Koch Energy Negotiated Rate to be effective 4/1/2012.
Filed Date: 3/29/12.
Accession Number: 20120329–5080.
Comments Due: 5 p.m. ET 4/10/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–483–001.
Applicants: Petal Gas Storage, LLC.
Description: Amendment to RP12–483–000 to be effective 4/9/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5086.
Comments Due: 5 p.m. ET 4/9/12.
Docket Numbers: RP12–507–001.
Applicants: Petal Gas Storage, LLC.
Description: Amendment to RP12–507–000 to be effective 5/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5087.
Comments Due: 5 p.m. ET 4/9/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8305 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–36–000.
Applicants: Solano 3 Wind LLC.
Description: Supplement to Notice of Self-Certification of Exempt Wholesale Generator Status of Solano 3 Wind LLC.
Filed Date: 3/13/12.
Accession Number: 20120313–5131.
Comments Due: 5 p.m. ET 4/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–749–001.
Applicants: Midwest Independent Transmission System Operator, Inc., Ameren Transmission Company of Illinois.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 03–30–12 ATXI Attachment O and GG Compliance to be effective 3/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5363.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1393–000.
Applicants: Southern California Edison Company.
Description: 2012 TACBAA Update to be effective 6/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5002.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1394–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: NMPC/National Grid Filing re: OATT Amendments to Wholesale TSC to be effective 7/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5059.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1395–000.
Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.
Description: MidAmerican-Pella WDS to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5061.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1396–000.
Applicants: MidAmerican Energy Company.
Description: Interconnection Agreement between City of Pella and MEC to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5080.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1397–000.
Applicants: PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.
Description: PPL Electric submits revisions to OATT Attachment H–8A to be effective 6/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5113.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1398–000.
Applicants: Westar Energy, Inc.
Description: KEPCo, Revisions to Attachment A—Delivery Points (6/1/12) to be effective 6/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5139.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1399–000.
Applicants: Enserco Energy LLC.
Description: Notice of Succession and Request for Category 1 Status of Enserco Energy LLC to be effective 5/29/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5143.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1400–000.
Applicants: Flat Ridge 2 Wind Energy LLC.
Description: MBR Application of Flat Ridge 2 Wind Energy LLC to be effective 5/29/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5162.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1401–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance Filing of Rate Schedule No. 11 in Docket Nos. ER09–659 and EL12–2 to be effective 3/30/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5194.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1402–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance Filing of Tariff Att. O in Docket Nos. ER12–659 and EL12–2 to be effective 3/30/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5202.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1403–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: PASNY/EDDS Tariffs RY 3 to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5241.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1404–000.
Applicants: New England Power Pool Participants Committee.
Description: Apr 2012 Membership Filing to be effective 4/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5258.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1405–000.
Applicants: The Connecticut Light and Power Company.
Description: PSEG New Haven Localized Costs Responsibility Agreement to be effective 3/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5269.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1406–000.
Applicants: Duke Energy Indiana, Inc.
Description: Annual Reconciliation RS No. 253 to be effective 7/1/2011.
Filed Date: 3/30/12.
Accession Number: 20120330–5274.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1407–000.
Applicants: Western Massachusetts Electric Company.
Description: PSEG New Haven Localized Costs Responsibility Agreement to be effective 3/1/2012.

Filed Date: 3/30/12.
Accession Number: 20120330–5282.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1408–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: WDS RY 3 changes 4–2012 to be effective 4/1/2012 under ER12–1408 Filing Type: 320.
Filed Date: 3/30/12.
Accession Number: 20120330–5306.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1409–000.
Applicants: Public Service Company of Colorado.
Description: 2011 Formula Rate Charges for Post-Retirement Benefits Other than Pensions of Public Service Company of Colorado.
Filed Date: 3/30/12.
Accession Number: 20120330–5313.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1410–000.
Applicants: Public Service Company of New Hampshire.
Description: PSEG New Haven Localized Costs Responsibility Agreement to be effective 3/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5334.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1411–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Revised Rate Schedule FERC No. 106 to be effective 3/30/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5344.
Comments Due: 5 p.m. ET 4/20/12.
Docket Numbers: ER12–1412–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: Midwest Energy, Inc., Wholesale Power Sales Service to be effective 6/1/2012.
Filed Date: 3/30/12.
Accession Number: 20120330–5374.
Comments Due: 5 p.m. ET 4/20/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–29–000.
Applicants: PJM Interconnection, L.L.C., PJM Settlement, Inc.
Description: Application of PJM Interconnection, L.L.C. and PJM Settlement, Inc. under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 3/30/12.
Accession Number: 20120330–5190.
Comments Due: 5 p.m. ET 4/20/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA09–16–003.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company's 2011 Annual Refund Report—Order 890 Requirement.
Filed Date: 3/30/12.
Accession Number: 20120330–5177.
Comments Due: 5 p.m. ET 4/20/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: March 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8304 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–88–000
Applicants: Everpower Wind Holdings, Inc., Alta Wind VI, LLC
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Alta Wind VI, LLC, et al.
Filed Date: 3/29/12
Accession Number: 20120329–5251
Comments Due: 5 p.m. ET 4/19/12

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4625–001
Applicants: Colton Power L.P.
Description: Supplement to Updated Market Power Analysis of Colton Power L.P.
Filed Date: 3/29/12
Accession Number: 20120329–5247
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–857–002
Applicants: Pacific Gas and Electric Company
Description: Compliance Filing to Correct the 3rd Amendment to the PWRPA IA and WDT SA to be effective 1/23/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5226
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1114–001
Applicants: ITC Midwest LLC
Description: Supplemental Filing for ITC–Northeast Power-IPL Transmission Agreement to be effective 5/29/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5223
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1291–001
Applicants: Wellhead Power Delano, LLC
Description: Wellhead Power Delano, LLC Market-Based Rate Tariff to be effective 5/10/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5213
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1384–000
Applicants: Entergy Arkansas, Inc.
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5152
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1385–000
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5160
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1386–000
Applicants: Entergy Louisiana, LLC
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5161
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1387–000
Applicants: Entergy Mississippi, Inc.
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5162
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1388–000
Applicants: Entergy New Orleans, Inc.
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5166
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1389–000
Applicants: ISO New England Inc., New England Power Pool Participants Committee
Description: MR1 Revisions to Auditing Demand Resources to be effective 6/1/2012.

Filed Date: 3/29/12
Accession Number: 20120329–5170
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1390–000
Applicants: Entergy Texas, Inc.
Description: LGCC to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5186
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1391–000
Applicants: Michigan Electric Transmission Company, LLC
Description: Filing of a Certificate of Concurrence to be effective 3/22/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5206
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1392–000
Applicants: ISO New England Inc., New England Power Pool Participants Committee
Description: Rev. to FCM Rules Related to Demand Resource Performance Incentives to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5215
Comments Due: 5 p.m. ET 4/19/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8303 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2819–001
Applicants: ALLETE, Inc.
Description: Allete, Inc submits Midwest ISO MBR Process Document.
Filed Date: 3/23/12
Accession Number: 20120328–0010
Comments Due: 5 p.m. ET 4/13/12
Docket Numbers: ER12–1131–000
Applicants: Parkview AMC Energy, LLC
Description: Additional Information to be effective N/A.
Filed Date: 3/29/12
Accession Number: 20120329–5107
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1379–000
Applicants: Cleco Power LLC
Description: Cleco Power 2012 Rate Case (Part 2 of 2) to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5000
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1380–000
Applicants: PacifiCorp
Description: Termination of Alpental Non-Conforming PTP Agmt (Skyline) to be effective 5/29/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5088
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1381–000
Applicants: Robbins Energy, LLC
Description: Cancellation of Tariff to be effective 3/29/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5091
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1382–000
Applicants: ISO New England Inc., New England Power Pool Participants Committee
Description: Rev. to FCM Rules Related to Supplemental Availability Bilaterals to be effective 6/1/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5102
Comments Due: 5 p.m. ET 4/19/12
Docket Numbers: ER12–1383–000
Applicants: Diamond State Generation Partners, LLC
Description: Market-Based Rate Application to be effective 3/29/2012.
Filed Date: 3/29/12
Accession Number: 20120329–5124
Comments Due: 5 p.m. ET 4/19/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8302 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–157–034; ER04–714–023; EL05–89–012.
Applicants: Bangor Hydro-Electric Company, Florida Power & Light Company—New England Division, Maine Public Utilities Commission v. Central Maine Power Company.
Description: Schedule 21–NEP Refund Report of New England Power Company.
Filed Date: 3/27/12.
Accession Number: 20120327–5247.
Comments Due: 5 p.m. ET 4/17/12.
Docket Numbers: ER12–1244–001.
Applicants: RLD Resources, LLC.
Description: Amended eTariff Filing to be effective 3/26/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5187.
Comments Due: 5 p.m. ET 4/17/12.
Docket Numbers: ER12–1301–001.
Applicants: Zone J Tolling Co., LLC.
Description: Zone J Tolling Co., LLC First Revised MBR Tariff to be effective 4/30/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5031.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: ER12–1365–000.
Applicants: NV Energy, Inc.
Description: Service Agreement No. 10–01257 Amended & Restated SGIA–Fotowatio to be effective 3/28/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5189.
Comments Due: 5 p.m. ET 4/17/12.
Docket Numbers: ER12–1366–000.
Applicants: Southwestern Public Service Company.
Description: 2012–3–28–SPS–GSEC–RBEC–S&S Sub IA 652 Filing to be effective 3/29/2012.

Filed Date: 3/28/12.
Accession Number: 20120328–5019.
Comments Due: 5 p.m. ET 4/18/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8299 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–51–000.
Applicants: Alta Wind VII, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind VII, LLC.
Filed Date: 3/28/12.
Accession Number: 20120328–5100.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: EG12–52–000.
Applicants: Alta Wind IX, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind IX, LLC.
Filed Date: 3/28/12.
Accession Number: 20120328–5101.
Comments Due: 5 p.m. ET 4/18/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4636–002.
Applicants: PacifiCorp, Avista Corporation, Puget Sound Energy, Inc., Portland General Electric Company, NorthWestern Corporation.
Description: Colstrip Project Transmission Agreement—Compliance Filing to be effective 3/28/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5060.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–715–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 03–28–12 Schedule 39 and Attachment GG Compliance to be effective 1/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5130.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–911–001.
Applicants: CPV Sentinel, LLC.
Description: CPV Sentinel, LLC submits tariff filing per 35: Category Status Tariff Revisions to be effective 3/29/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5137.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1367–000.
Applicants: PacifiCorp.
Description: BPA NITSA (UIUC) Rev 6 to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5076.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1368–000.
Applicants: PacifiCorp.
Description: PAC Energy NITSA Rev 14 to be effective 3/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5077.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1369–000.
Applicants: Beaver Run Solar Farm LLC.
Description: Beaver Run Solar Farm LLC submits request for PJM Interconnection, L.L.C. Tariff Waiver and Reinstatement of February 27, 2012 Queue Position W3–106.
Filed Date: 3/27/12.
Accession Number: 20120327–5249.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1370–000.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Compliance Filing—Certificate of Concurrence for CFA to be effective N/A.
Filed Date: 3/28/12.
Accession Number: 20120328–5104.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1371–000.
Applicants: Pacific Gas and Electric Company.
Description: Notices of Termination of Radback and Kansas South E&P Agreements to be effective 2/8/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5111.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1372–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM Tariff & OA re DR Subzone/Product Dispatch to be effective 6/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5129.
Comments Due: 5 p.m. ET 4/18/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8300 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–87–000.
Applicants: Hot Spring Power Company, LLC.
Description: Application of Hot Spring Power Company, LLC for Authorization under Section 203 of the Federal Power Act and Request for Confidential Treatment and Waivers.
Filed Date: 3/28/12.
Accession Number: 20120328–5176.
Comments Due: 5 p.m. ET 5/29/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1373–000.
Applicants: Motiva Enterprises LLC.
Description: Motiva Enterprises LLC Market-Based Rate Tariff to be effective 3/29/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5155.
Comments Due: 5 p.m. ET 4/18/12.

Docket Numbers: ER12–1374–000.
Applicants: New England Power Company.
Description: Construction Services Agreement with Western Massachusetts Electric Co. to be effective 12/21/2011.
Filed Date: 3/28/12.
Accession Number: 20120328–5158.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: ER12–1375–000.
Applicants: Westar Energy, Inc.
Description: KEPCo, Revisions to Attachment A—Delivery Points (4/1/12) to be effective 4/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5160.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: ER12–1376–000.
Applicants: Shell Chemical LP.
Description: Shell Chemical LP Market-Based Rate Tariff to be effective 3/29/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5161.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: ER12–1377–000.
Applicants: Westar Energy, Inc.
Description: The City of Wamego, Kansas Wholesale Power Sales Service to be effective 6/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5162.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: ER12–1378–000.
Applicants: Cleco Power LLC.
Description: Cleco Power 2012 Rate Case (Part 1 of 2) to be effective 6/1/2012.
Filed Date: 3/28/12.
Accession Number: 20120328–5163.
Comments Due: 5 p.m. ET 4/18/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8301 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1383–000]

Diamond State Generation Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Diamond State Generation Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 19, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8298 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–46–000]

Puget Sound Energy, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

On March 30, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL12–46–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed rate reduction by Puget Sound Energy, Inc. *Puget Sound Energy, Inc.,* 138 FERC ¶ 61,236 (2012).

The refund effective date in Docket No. EL12–46–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: March 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8308 Filed 4–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9656–5; EPA–HQ–ORD–2007–0664]

Integrated Risk Information System (IRIS); Announcement of Availability of Literature Searches for IRIS Assessments

AGENCY: Environmental Protection Agency.

ACTION: Announcement of availability of literature searches for IRIS assessments; request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of literature searches for acetaldehyde (75–07–0) and 1,2,3-trimethlybenzene (526–73–8). EPA is requesting scientific information on health effects that may result from exposure to these chemical substances.

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment.

DATES: EPA will accept information related to the specific substances included herein as well as any other compounds being assessed by the IRIS Program. Please submit any information in accordance with the instructions provided below.

ADDRESSES: Please submit relevant scientific information identified by docket ID number EPA–HQ–ORD–2007–0664, online at *www.regulations.gov* (EPA's preferred method); by email to *ord.docket@epa.gov;* mailed to Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Information on a disk or CD–ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Karen Hammerstrom, IRIS Program Deputy Director, National Center for Environmental Assessment, (mail code: 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347–8642, facsimile: (703) 347–8689; or email: *FRNquestions@epa.gov.*

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects as well as assessments of potential carcinogenic effects resulting from chronic exposure. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

This data call-in is an early step in the IRIS process. As literature searches are completed, the results will be posted on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA.

EPA recently added 1,2,3-trimethylbenzene (TMB) to the IRIS agenda to complete the set of three trimethylbenzene isomers. Two other isomers of TMB are already included on the IRIS agenda and undergoing review (1,2,4-TMB and 1,3,5-TMB). 1,2,3-TMB is often found in the environment with 1,2,4 and 1,3,5-TMB. Given this situation, and in response to comments received in the Agency Review and Interagency Science Consultation for 1,2,4 and 1,3,5-TMB, EPA is adding 1,2,3-TMB to the agenda and will conduct assessments of all three isomers at the same time. Because the 1,2,4- and 1,3,5-TMB assessments are already underway, EPA would appreciate notification of any additional literature as soon as possible so that this information can be included in the 1,2,3-TMB assessment prior to public comment and external peer review.

Request for Public Involvement in IRIS Assessments

EPA is soliciting public involvement in assessments on the IRIS agenda. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessments listed in this notice or any other assessments on the IRIS agenda. Interested persons may provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments, the public may submit information on any chemical substance at any time.

EPA is announcing the availability of additional literature searches on the IRIS web site (*www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. Literature searches are now available for acetaldehyde (75–07–0) and 1,2,3-trimethylbenzene (526–73–8) at *www.epa.gov/iris* under ''IRIS Agenda and Literature Searches.'' When viewing the literature search for 1,2,3-trimethylbenzene, reviewers should also review the literature searches for 1,2,4 and 1,3,5-TMB as some of the studies included in those searches also include data and information on 1,2,3-TMB and will be considered in the 1,2,3-TMB assessment. Instructions on how to submit information are provided below under General Information.

General Information

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0664 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket, (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide information by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0664. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 30, 2012.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–8209 Filed 4–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed 03/26/2012 through 03/30/2012 pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120093, Draft EIS, USFS, OR, Rim-Paunina Project and Forest Plan Amendment, To Decrease the Density of Trees, Implementation, Crescent Ranger District, Deschutes National Forest, Klamath County, OR, *Comment Period Ends:* 05/21/2012, *Contact:* Tim Foley 541–433–3200.

EIS No. 20120094, Draft EIS, BOEM, 00, Programmatic—Geological and Geophysical Activities in Federal Waters of the Mid- and South Atlantic Outer Continental Shelf and Adjacent State Waters, *Comment Period Ends:* 06/04/2012, *Contact:* Jill Lewandowski 703–787–1703.

EIS No. 20120095, Final EIS, USFS, ID, Mill Creek-Council Mountain Landscape Restoration Project, Proposed Landscape Restoration Treatment Activities on 51,975 Acres, Council Ranger District, Payette National Forest, Adams County, ID, *Review Period Ends:* 05/07/2012, *Contact:* Stephen Penny 208–253–0164.

EIS No. 20120096, Final EIS, BLM, UT, Greater Natural Buttes Area Gas Development Project, Development of Additional Well Pads and Associated Infrastructure, Application Approvals, Uintah County, UT, *Review Period Ends:* 05/07/2012, *Contact:* Stephanie Howard 435–781–4469.

EIS No. 20120097, Final EIS, FHWA, CA, Phase II—CA–11 and Otay Mesa East Port of Entry Project, Construction of a new Toll Highway (CA11) and Port of Entry in the East Otay Mesa Area and Commercial Vehicle Enforcement Facility, County of San Diego, CA, *Review Period Ends:* 05/07/2012, *Contact:* Manuel E. Sanchez 619–699–7336.

Dated: April 3, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–8351 Filed 4–5–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2012–0086]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 94–08 Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank is requesting an emergency approval of Ex-Im Bank form EIB 94–08, Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy. Ex-Im Bank's exporter policy holders, along with the financial institution providing it with financing, provide this form to Ex-Im Bank. The form transfers the duties and obligations of the insured exporter to the financial institution. It also provides certifications to the financial institution and Ex-Im Bank that the financed export transaction results in a valid, enforceable, and performing debt obligation. Exporter policy holders need this form to obtain financing for their medium term export sales. Ex-Im Bank believes that EIB 94–08 requires emergency approval in order to continue operation of its medium term program for U.S. exporters.

Lack of an emergency approval of this form would greatly restrict our ability to support many of the export sales made by U.S. businesses. Without this form, it would not be possible for financial institutions to obtain sufficient comfort to provide funding to our exporter policy holders. This would adversely impact Ex-Im Bank's ability to finance small business exporters and its overall mission to support U.S. exports and maintain U.S. jobs. Accordingly, Ex-Im Bank requests emergency approval of EIB 94–08 in order to continue operation of this important export program.

The form can be viewed at *www.exim.gov/pub/pending/eib94–08.pdf.*

DATES: Comments should be received on or before June 5, 2012 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *www.regulations.gov* or by mail to Arnold Chow, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 94–08 Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy.

OMB Number: 3048–xxx.

Type of Review: Regular.

Need and Use: The form transfers the duties and obligations of the insured exporter to the financial institution. It also provides certifications to the financial institution and Ex-Im Bank that the financed export transaction results in a valid, enforceable, and performing debt obligation. Exporter policy holders need this form to obtain financing for their medium term export sales.

Affected Public: This form affects entities involved in the export of U.S goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 10 minutes.

Government Annual Burden Hours: 5 hours.

Frequency of Reporting or Use: As needed.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–8309 Filed 4–5–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 23, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. The Duncan, Hrvol, and Molzen Families consisting of E. Ray Duncan, individually and as beneficiary of the Hardware State Bank 401K Plan and as beneficiary of the Sullivan Bancshares, Inc. Employee Savings and Retirement Plan, together as a group acting in concert with Sally Foley Duncan and Sally Foley Duncan, as Trustee of the John K. Foley Revocable Living Trust and as beneficiary of the Hardware State Bank 401K Plan, the John K. Foley Revocable Living Trust, and Gloria Foley, all of Lovington, Illinois, and Paul Michael Hrvol, Jr. and Paul Michael Hrvol, Jr., as beneficiary of the Sullivan Bancshares, Inc. Employee Savings and Retirement Plan, Michelle Beth Hrvol and Michelle Beth Hrvol, as beneficiary of the Sullivan Bancshares, Inc. Employee Savings and Retirement Plan, all of Sullivan, Illinois, and Roger Reid Molzen and Roger Reid Molzen, as beneficiary of the Sullivan Bancshares, Inc. Employee Savings and Retirement Plan and Christina DeAnne Molzen, all of Sullivan, Illinois, collectively as a group acting in concert, to retain shares of Moultrie Bancorp, Inc. and thereby indirectly control Hardware State Bank, both of Lovington, Illinois.

Board of Governors of the Federal Reserve System, April 3, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8321 Filed 4–5–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Agency

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Synthesis of AHRQ–Funded HAI Projects.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 5, 2012.

ADDRESSES: Written comments should be submitted to: Doris Leflcowitz, Reports Clearance Officer, AHRQ, by email at *doris.leflcowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Leflcowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.leflcowitz@AHR.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Synthesis of AHRQ–Funded HAI Projects

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the Synthesis of AHRQ–Funded HAI Projects.

For approximately a decade, AHRQ has conducted research on preventing healthcareassociated infections (HAIs), both internally and through contracts and grants. AHRQ's grant- and contract-supported projects have been directed at the major types of HAIs: Central-line-associated bloodstream infections (CLABSI), catheter-associated urinary tract infections (CAUTI), surgical site infections (S SI), ventilator-associated pneumonia (VAP), methicillin-resistant Staphylococcus aureus (MRSA), and Clostridium difficile (C. cliff.). Projects have addressed the problem of HAIs in diverse healthcare settings, including hospitals, ambulatory settings (ambulatory surgery centers, end-stage renal disease facilities, and outpatient clinics and offices), and long-term care facilities. AHRQ's portfolio of HAI projects has emphasized a combination of research and implementation initiatives. In the latter category, a major focus of AHRQ's efforts has been to deploy tools that can improve provider performance and reduce HAIs. Based on the earlier success of the Michigan Keystone project, AHRQ has funded projects to implement the Comprehensive Unit-based Safety Program (CUSP) to address CLABSI and CAUTI nationwide. Data are now emerging that demonstrate the success of CUSP in reducing CLABSI in hospitals across the nation.

Between 2007 and 2010, AHRQ funded 40 contracts and 18 grants focusing on expanding the HAI knowledge base and implementing HAI prevention strategies. Today it is

necessary to look across these projects in order to (1) identify, document, and synthesize their findings and results to ensure that AHRQ, healthcare professionals, and the public can make best use of these findings and (2) identify remaining gaps in the HAI science base to enable AHRQ to fund future studies that will address these needs. The synthesis will draw on several data sources, including interviews with project leaders. In addition to learning about studies that have not published peer-reviewed manuscripts, the interviews will enable the project team to delve into project details that are not typically available in publications, such as the project leader's motivation for responding to the request for proposal, challenges faced in implementing the project, changes in the project's delivery schedule or work plan, experts' views on how HAI prevention evidence generated by a specific project fits into the HAI research agenda more broadly, and remaining gaps in the HAI knowledge base.

AHRQ has contracted with IMPAQ International, LLC, to develop this synthesis, identify gaps, and promote the widespread application of successful HAI prevention approaches. This research has the following goals: (1) Identify and document findings and synthesize results of AHRQ-funded HAI projects; (2) Disseminate key findings from the HAI projects; and (3) Identify remaining gaps in the HAI knowledge base.

This study is being conducted by AHRQ through its contractor, IMPAQ International, LLC and its subcontractor, the RAND Corporation, pursuant to AHRQ's statutory authority to conduct and support research and disseminate information on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collection will be implemented:

(1) Interviews with contractors—Interviews will be conducted with the project leaders (project directors or project managers) from 40 HAT contractors. The purpose of these interviews is to identify (a) key findings, (b) gaps in knowledge base, (c) lessons learned, (d) effective approaches for preventing and reducing HAIs, and e) opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs.

(2) Interviews with grantees—Interviews will be conducted with the project leaders (principal investigators) from 18 HAI grantees. Similar to the interviews with contractors, the purpose of these interviews is to identify (a) key findings, (b) gaps in knowledge base, (c) lessons learned, (d) effective approaches for preventing and reducing HAIs, and (e) opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs. While the goals of the interviews with contractors and grantees are similar, the two audiences require separate interview protocols because their funding mechanisms and project structures differ. For example, contracts have more structured deliverable schedules than do grants and grants are more likely than contracts to be on investigator-initiated topics.

AHRQ will interview key project leaders to learn about the processes and methods used, results achieved, and lessons learned under the AHRQ-funded HAI contracts and grants. This information will enable AHRQ to identify effective approaches for preventing and reducing HAIs and for promoting the widespread application of these approaches. Finally, collecting data from these audiences will allow AHRQ to detect gaps in the HAI science base and identify opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this evaluation. Interviews will be conducted with 40 contractors and 18 grantees and each will last about 90 minutes. The total burden hours are estimated to be 87.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Interviews with contractors	40	1	1.5	60
Interviews with grantees	18	1	1.5	27
Total	58	n/a	n/a	87

The respondents are the project leaders, that is, project directors for the contracts and principal investigators for the grants. Based on the type of grant and the project leaders' qualifications, the project leaders were categorized into three labor categories: Social Scientists and Related Workers; Epidemiologists; and Medical Scientists. For example, one project director conducting a randomized controlled trial is a physician and was categorized into the Medical Scientist labor category. Other project leaders have advanced degrees in the social sciences (e.g., gerontology) or epidemiology and were included in the Social Scientist or Epidemiologist labor categories, as appropriate.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in the evaluation. The total cost burden is estimated to be $3,450.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Interviews with contractors	40	60	$39.66	$2,380
Interviews with grantees	18	27	39.66	1,070

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Data collection activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Total	58	87	n/a	3,450

*Base upon the weighted average of the mean wages for 19–3099 Social Scientists and Related Workers, All Other ($37.45 per hour; n = 17), 19–1041 Epidemiologists ($32.83; n = 5) and 19–1042 Medical Scientists (($41.69; n = 36), National Compensation Survey: Occupational Wages in the United States May 2010, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for conducting the evaluation. The total cost is estimated to be $87,502.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$6,135	$2,045
Data Collection Activities	17,400	5,800
Data Processing and Analysis	29,000	9,667
Publication of Results	0	0
Project Management	5,800	1,933
Overhead	29,167	9,722
Total	87,502	29,167

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 29, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–8098 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Detecting Emerging Vector-Borne Zoonotic Pathogens in Indonesia, Funding Opportunity Announcement (FOA) CK12–002, initial review.

Correction: The notice was published in the **Federal Register** on March 2, 2012, Volume 77, Number 42, Page 12844. The time and date should read as follows:

Time and Date: 1 p.m.–3 p.m., April 16, 2012 (Closed).

Contact Person for More Information: Gregory Anderson, M.P.H., M.S., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 30, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8286 Filed 4–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Identifying Modifiable Protective Factors for Intimate Partner Violence or Sexual Violence Perpetration, Funding Opportunity Announcement (FOA) CE12–003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–3 p.m., April 26, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Identifying Modifiable Protective Factors for Intimate Partner Violence or Sexual Violence Perpetration, FOA CE12–003''.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4281.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 30, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8285 Filed 4–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 10:30 a.m.–6 p.m., May 1, 2012; 9 a.m.–3:45 p.m., May 2, 2012.

Place: CDC, 1600 Clifton Road, NE., Roybal Campus, Atlanta, Georgia 30329. May 1, 2012: Building 19, Room 254/255. May 2, 2012: Building 21, Room 1204A/1204B.

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 75 people. Public participants should pre-register for the meeting as described in Additional Information for Public Participants.

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters To Be Discussed: Agenda items for this meeting include: (1) Briefings and BSC deliberation on the following topics: CDC Laboratory Preparedness; OPHPR Research Portfolio Budget; CDC's Preparedness Index; Novel Approaches to Anti-Viral Delivery; CDC's Anthrax Management Team; Estimating the Cost of Preparedness; (2) Programmatic responses to BSC-approved recommendations resulting from external peer review of: The Career Epidemiology Field Officer (CEFO) Program and the Preparedness and Emergency Response Research Centers (PERRCs) program; (3) BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission; (4) a discussion of a proposed ad hoc working group to review the Division of Strategic National Stockpile (DSNS).

Agenda items are subject to change as priorities dictate.

Additional Information for Public Participants: Members of the public that wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EDT) on Monday, April 20, 2012:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or Email Address

Contact Person for More Information: Carol Marsh, OPHPR BSC Coordinator, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–4773; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: March 30, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8290 Filed 4–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Family Healthware

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, exclusive license to practice the inventions embodied in the patent application referred to below to Sanitas Inc., having a place of business in La Jolla, California. The patent rights in these inventions have been assigned to the government of the United States of America. The patent application(s) to be licensed are:

US Patent Application 11/815,445 entitled ''Personal Assessment Including Familial Risk Analysis for Personalized Disease Prevention Plan,'' filed 5/20/2008, claiming priority to Provisional Patent Application No. 60/650,076, filed 2/3/2005. CDC Technology ID No. I–004–04.

Status: Patent Application Pending.

Priority Date: 2/3/2005.

Issue Date: N/A.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology: This technology provides a computer-based familial risk assessment tool. It involves a three-step process which uses the disease history of a person's first and second-degree relatives to assess the risk of common diseases of adulthood in order to influence early disease detection and prevention strategies.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments, and other materials relating to the contemplated license should be directed to Donald Prather, J.D., Ph.D., Technology Licensing and Marketing Specialist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, Telephone: (770) 488–8612; Facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 27, 2012.

Tanja Popovic,

Deputy Associate Director for Science Centers for Disease Control and Prevention.

[FR Doc. 2012–8291 Filed 4–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0332]

Jyotin Parikh: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Jyotin Parikh for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Parikh was convicted of one count of conspiracy to commit an offense against the United States for conduct relating to the

development and approval, including the process for development and approval, of a drug product and to the regulation of drug products under the FD&C Act. In addition, the type of conduct underlying the conviction undermined the process for the regulation of drugs. Mr. Parikh was given notice of the proposed debarment and an opportunity to request a hearing within the time frame prescribed by regulation. Mr. Parikh failed to request a hearing, which constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective April 6, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(II) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(II)) permits FDA to debar an individual if it finds that the individual has been convicted of a conspiracy to commit a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or relating to the regulation of any drug product under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On December 9, 2010, judgment was entered against Mr. Parikh in the United District Court for the District of New Jersey based upon a plea of guilty to one count of conspiracy to commit an offense against the United States, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for the conviction is as follows: Mr. Parikh was employed at Able Laboratories, Inc. (Able), as Laboratory Manager in Quality Control and was later transferred to Able's Research and Development. Able developed, manufactured, and sold several generic drug products, including products for cardiac and psychiatric conditions and prescription pain relievers.

From in or around 1999 through on or about May 19, 2005, Mr. Parikh conspired to cause the introduction and delivery for introduction into interstate commerce of a drug that was adulterated and misbranded, with an intent to defraud and mislead, contrary to 18 U.S.C. 371, 21 U.S.C. 331(a) and 333(a)(2).

Mr. Parikh and his co-conspirators impaired, impeded, defeated and obstructed FDA's lawful government function to approve the manufacture and distribution of generic drug products by violating Good Manufacturing Practices; violating Standards of Procedure by failing to properly investigate, log and archive questionable, aberrant, and unacceptable laboratory results so that Able could conceal improprieties and continue to distribute and sell its drug products; manipulating and falsifying testing data and information to conceal from FDA failing laboratory results relating to Able's generic drug products; creating and maintaining false, fraudulent, and inaccurate test results to make it appear that drug products had the requisite identity, strength, quality, and purity characteristics so the drug products could be distributed and sold to increase Able's sales and profit; and creating and maintaining false, fraudulent, and inaccurate data and records to obtain FDA approval to market new product lines.

In furtherance of the conspiracy, in or around March 2003, Mr. Parikh supervised the creation of false and fraudulent entries in chemist laboratory notebooks, and in the corresponding process validation binders, that were used to support Able's Abbreviated new Drug Application for Lithium Carbonate Extended Release tablets, for which Able received FDA approval on or about April 21, 2003.

As a result of his conviction, on December 20, 2011, FDA sent Mr. Parikh a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(II) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(II)) that Mr. Parikh was convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermined the process for the regulation of drugs. The proposal also offered Mr. Parikh an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Parikh failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(II) of the FD&C Act under authority delegated to him (Staff Manual Guide 1410.35), finds that Jyotin Parikh has been convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermined the process for the regulation of drugs.

As a result of the foregoing finding, Mr. Parikh is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Parikh, in any capacity during Mr. Parikh's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Parikh provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Parikh during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Mr. Parikh for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2009–N–0332 and sent to the Division of

Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–8342 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0144]

Guidance for Industry and Food and Drug Administration Staff; User Fees for 513(g) Requests for Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Industry and Food and Drug Administration Staff; User Fees for 513(g) Requests for Information.'' This guidance document describes the user fees associated with 513(g) requests for information.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry and Food and Drug Administration Staff; User Fees for 513(g) Requests for Information'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development (HFM–40), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Bob Gatling, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1640, Silver Spring, MD 20993–0002, 301–796–6560; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852. 301–796–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(g)) provides a means for obtaining FDA's views about classification information and the regulatory requirements that may be applicable to a particular device. Title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA), also termed the Medical Device User Fee Amendments of 2007 (Pub. L. 110–85), extends FDA's authority to collect medical device user fees by establishing a fee for ''a request for classification information.''

In the **Federal Register** of April 29, 2010 (75 FR 22601), FDA announced the availability of the draft guidance. Comments on the draft guidance were due by July 28, 2010. No comments were received. The guidance announced in this notice finalizes the draft guidance of the same title.

Elsewhere in this issue of the **Federal Register,** FDA is publishing a document announcing the availability of a guidance document entitled ''Guidance for Industry and Food and Drug Administration Staff; FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act.'' This guidance describes procedures for the submission, FDA review, and FDA response to requests for information with respect to the classification of a device or the requirements applicable to a device submitted in accordance with section 513(g) requests for information.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on user fees for 513(g) requests for information. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive ''Guidance for Industry and Food and Drug Administration Staff; User Fees for 513(g) Requests for Information,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8419 to receive a hard copy. Please use the document number 1709 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in this guidance was approved under OMB control number 0910–0705.

This guidance also refers to currently approved collections of information found in FDA regulations. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120 and the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 29, 2012.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2012–8227 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0153]

Guidance for Industry and Food and Drug Administration Staff; Food and Drug Administration and Industry Procedures for Section 513(g) Requests for Information Under the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Industry and Food and Drug Administration Staff; FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act.'' This guidance document establishes the procedures for the submission, FDA review, and FDA response to requests for information regarding the class in which a device has been classified.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry and Food and Drug Administration Staff; FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development (HFM–40), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8419. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Bob Gatling, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1640, Silver Spring, MD 20993–0002, 301–796–6560; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(g)) provides a means for obtaining FDA's views about the classification and the regulatory requirements that may be applicable to a particular device. This guidance describes procedures for the submission, FDA review, and FDA response to requests for information with respect to the classification of a device or the requirements applicable to a device under the FD&C Act that are submitted in accordance with section 513(g) requests for information. FDA's response to section 513(g) requests for information are not device classification decisions and do not constitute FDA clearance or approval for marketing. Classification decisions and clearance or approval for marketing require submissions under different sections of the FD&C Act.

In the **Federal Register** of April 29, 2010 (75 FR 22599), FDA announced the availability of the draft guidance. Comments on the draft guidance were due by July 28, 2010. No comments were received. The guidance announced in this notice finalizes the draft guidance of the same title.

Additionally, the FD&C Act, as amended by the FDA Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), requires FDA to collect user fees for section 513(g) requests for information. Elsewhere in this issue of the **Federal Register,** FDA is publishing a document announcing the availability of a guidance entitled ''Guidance for Industry and Food and Drug Administration Staff; User Fees for 513(g) Requests for Information.''

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on procedures regarding section 513(g) requests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive ''Guidance for Industry and Food and Drug Administration Staff; FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8419 to receive a hard copy. Please use the document number 1671 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in this guidance was approved under OMB control number 0910–0705.

This guidance also refers to currently approved collections of information found in FDA regulations. The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR 860.123 have been approved under OMB control number 0910–0138.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is

only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 29, 2012.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2012–8226 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–E–0245 and FDA–2011–E–0246]

Determination of Regulatory Review Period for Purposes of Patent Extension; TEFLARO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TEFLARO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TEFLARO (ceftaroline fosamil). TEFLARO is indicated for the treatment of the following infections caused by designated susceptible bacteria: Acute bacterial skin and skin structure infections; and community-acquired bacterial pneumonia. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for TEFLARO (U.S. Patent Nos. 6,417,175 and 6,906,055) from Takeda Pharmaceutical Company Limited, and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated June 8, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TEFLARO represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TEFLARO is 2,118 days. Of this time, 1,814 days occurred during the testing phase of the regulatory review period, while 304 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 12, 2005. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 12, 2005.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 30, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for TEFLARO (NDA 200–327) was submitted on December 30, 2009.

3. *The date the application was approved:* October 29, 2010. FDA has verified the applicant's claim that NDA 200–327 was approved on October 29, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,049 days or 1,211 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 5, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8339 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0152]

Determination of Regulatory Review Period for Purposes of Patent Extension; LATUDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LATUDA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LATUDA (lurasidone hydrochloride). LATUDA is indicated as an atypical antipsychotic agent for the treatment of patients with schizophrenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LATUDA (U.S. Patent No. 5,532,372) from Dainippon Sumitomo Pharma Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LATUDA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LATUDA is 3,602 days. Of this time, 3,299 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 19, 2000. The applicant claims December 17, 2000, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 19, 2000, when the project manager in the Division of Neuropharmacological Drug Products, Center for Drug Evaluation and Research, called the IND applicant on the behalf of the Division Director, to notify the IND applicant that studies under the IND may proceed. This date, December 19, 2000, rather than the claimed December 17, 2000, is also noted in Attachment F of the patent term extension application.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 30, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for LATUDA (NDA 200–603) was submitted on December 30, 2009.

3. *The date the application was approved:* October 28, 2010. FDA has verified the applicant's claim that NDA 200–603 was approved on October 28, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 5, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8354 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–E–0371 and FDA–2011–E–0379]

Determination of Regulatory Review Period for Purposes of Patent Extension; NATROBA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NATROBA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NATROBA (spinosad). NATROBA is indicated for the topical treatment of head lice infestations in patients four years of age and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NATROBA (U.S. Patent Nos. 6,063,771 and 6,342,482) from Eli Lilly and Company, and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated June 22, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NATROBA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NATROBA is 2,261 days. Of this time, 1,534 days occurred during the testing phase of the regulatory review period, while 727 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* November 11, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 11, 2004.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* January 22, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for NATROBA (NDA 22–408) was submitted on January 22, 2009.

3. *The date the application was approved:* January 18, 2011. FDA has verified the applicant's claim that NDA 22–408 was approved on January 18, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,493 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 5, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8337 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0367]

Determination of Regulatory Review Period for Purposes of Patent Extension; DATSCAN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

DATSCAN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, (301) 796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DATSCAN (Ioflupane I–123 injection). DATSCAN is indicated for striatal dopamine transporter visualization using single photon emission computed tomography brain imaging to assist in the evaluation of adult patients with suspected Parkinsonian syndromes. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DATSCAN (U.S. Patent No. 5,310,912) from GE Healthcare Limited, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 22, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DATSCAN represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DATSCAN is 677 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, while 677 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FFD&C Act) (21 U.S.C. 355(i)) became effective:* not applicable. The applicant claims June 19, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that no IND was submitted under subsection 505(i) of the FFD&C Act for this human drug product.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FFD&C Act:* March 9, 2009. The applicant claims March 6, 2009, as the date the new drug application (NDA) for DATSCAN (NDA 22–454) was initially submitted. However, FDA records indicate that NDA 22–454 was submitted on March 9, 2009.

3. *The date the application was approved:* January 14, 2011. FDA has verified the applicant's claim that NDA 22–454 was approved on January 14, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 5, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8340 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–E–0380 and FDA–2011–E–0389]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIIBRYD

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VIIBRYD and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written

petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VIIBRYD (vilazodone hydrochloride). VIIBRYD is indicated for the treatment of major depressive disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VIIBRYD (U.S. Patent Nos. 5,532,241 and 7,834,020) from Merck Patent GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 22, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VIIBRYD represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VIIBRYD is 4,778 days. Of this time, 4,472 days occurred during the testing phase of the regulatory review period, while 306 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 24, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 24, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 22, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for VIIBRYD (NDA 22–567) was submitted on March 22, 2010.

3. *The date the application was approved:* January 21, 2011. FDA has verified the applicant's claim that NDA 22–567 was approved on January 21, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks either 67 days or 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 5, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8341 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: May 3, 2012

Time: 8 a.m. to 5:20 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gail J Bryant, MD, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8107, MSC 8328, Bethesda, MD 20892–8328, (301) 402–0801, *gb30t@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 2, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8353 Filed 4–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Synaptic Vesicles and Synaptogenesis.

Date: April 18, 2012.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pain and Chemosensory Neuroscience.

Date: April 25–26, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Genetics Program Projects.

Date: May 1, 2012.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 30, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8352 Filed 4–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF): None.

Laboratories:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227 (Formerly: S.E.D. Medical Laboratories).

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory voluntarily withdrew from the National Laboratory Certification Program on March 31, 2012:

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

The following laboratory voluntarily withdrew from the National Laboratory Certification Program on March 31, 2012:

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT

certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2012–8236 Filed 4–5–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0138]

Merchant Mariner Medical Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee (MMMAC) will meet on May 8–9, 2012 to discuss matters relating to medical certification determinations for issuance of merchant mariner credentials, medical standards and guidelines for physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meeting will be open to the public.

DATES: MMMAC will meet on Tuesday, May 8, and Wednesday, May 9, 2012 from 8 a.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the National Maritime Center (NMC), 3rd floor conference room, 100 Forbes Drive, Martinsburg, West Virginia 25404.

Please be advised that in order to gain admittance to the NMC building, you must provide identification in the form of a government-issued picture identification card. If you plan to attend, please notify the individual listed in **FOR FURTHER INFORMATION CONTACT**, no later than April 20, 2012 so that administrative access into the NMC building can be processed prior to arrival.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact LT Dylan McCall, the ADFO, 202–372–1128 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing to the Coast Guard on or before April 20, 2012 and must be identified by USCG–2011–0138 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–372–1246.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 15 copies to the ADFO no later than April 20, 2012.

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov*.

A public comment period will be held on May 8, 2012, from 9:20 a.m. to 9:30 a.m., and May 9, 2012 from 5 p.m. to 5:10 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific tasks and issues are discussed by the committee. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dylan McCall, the MMMAC ADFO, at telephone 202–372–1128 or email *Dylan.k.mccall@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MMMAC is authorized by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and the committee's purpose is to advise the Secretary on matters related to medical certification determinations for issuance of merchant mariner credentials; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

Agenda:

Day 1

(1) Opening comments by Designated Federal Officer (DFO), Captain E. P. Christensen.

(2) Remarks from National Maritime Center Leadership.

(3) Introduction and swearing in of the new members.

(4) Designation of the Chair and Vice-Chair.

(5) Review of Last Meeting's Minutes.

(6) Public Comments.

(7) Working Groups addressing the following task statements may meet to deliberate—

(a) Task Statement 1, Revising Navigation and Vessel Inspection Circular (NVIC) 04–08. The NVIC can be found at *http://www.uscg.mil/hq/cg5/nvic/*. Medical and Physical Guidelines for Merchant Mariner Credentials.

(b) Task Statement 2, top medical conditions leading to denial of mariner credentials.

(c) Task Statement 4, Revising the CG–719K Medical Evaluation Report Form for mariner physicals. The form can be found at *http://www.uscg.mil/nmc*.

(d) Task Statement 5, Creating medical expert panels for the top medical conditions.

(e) Task Statement 6, Developing designated medical examiner program.

Day 2

(1) Working Group Discussions continued from Day 1.

(2) By mid-afternoon, the Working Groups will report, and if applicable, make recommendations for the full committee to consider for presentation to the Coast Guard. Official action on these recommendations may be taken on this date. The public will have an opportunity to speak during the Working Groups Report.

(3) General public comments/presentations.

(4) Closing remarks/plans for next meeting.

Dated: April 2, 2012.

P.F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–8288 Filed 4–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System (DIS)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning document imaging. During the test, certain Automated Commercial Environment (ACE) participants will be able to submit electronic images of a specific set of CBP and Participating Government Agency (PGA) forms and supporting information to CBP. Specifically, importers, and brokers, will be allowed to submit official CBP documents and specified PGA forms via the Electronic Data Interchange (EDI). This notice also describes test particulars including commencement date, eligibility, procedural and documentation requirements, and test development and evaluation methods. The test will be known as the Document Image System (DIS) Test.

DATES: The DIS test will commence no earlier than April 6, 2012 and will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the test may be submitted at any time during the test to the address set forth below.

ADDRESSES: Comments concerning this notice should be submitted via email to Monica Crockett at *ESARinfoinbox@dhs.gov*. In the subject line of your email, please indicate ''*Document Image System (DIS)*''.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Monica Crockett at *monica.crockett@dhs.gov*. For technical questions related to ABI transmissions, contact your assigned client representative. Any PGA interested in participating in DIS should contact Susan Dyszel at *susan.dyszel@dhs.gov*. Interested parties without an assigned client representative should direct their questions to Susan Maskell at *susan.maskell@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). See 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

ACE prototypes are tested in accordance with § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP components including ACE. For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts and Revenue (ESAR) is set forth below in Section X, entitled, ''Development of ACE Prototypes.'' The procedures and criteria related to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

Document Image System (DIS) Test Program

This notice announces a CBP plan to allow parties who have been accepted in previous ESAR tests and who file entry summaries in ACE to submit specified CBP and PGA documents via the Electronic Data Interchange (EDI) as part of the Document Image System (DIS) test. DIS is currently a stand-alone system that will eventually support integration with other CBP systems and other government agencies. DIS capabilities will be delivered in multiple phases.

The first phase, and the subject of this notice, will enable participating importers and brokers to transmit images of specified CBP and PGA forms with supporting information via EDI in an Extensible Markup Language (XML) format, in lieu of conventional paper methods. DIS will provide for the storage of all submitted documents in a secure centralized location for the maintenance of associations with ACE entry summary transactions. Authorized CBP and PGA users will have the ability to access document images submitted by trade participants via a user interface, which will allow CBP and PGA users to select specific documents for review, to change the status of documents, and to add comments based on the current state of their review. The interface will also allow the document image to be downloaded or printed, if necessary. This first phase will be limited to the forms listed below in Section III of this notice. Subsequent deployment phases of DIS will extend the functionality developed in this first phase to other CBP and PGA systems. These latter phases will incorporate additional forms into DIS and provide new interfaces for integration of DIS with other systems in CBP and other government agencies. The exact dates and content of subsequent phases of DIS have not yet been determined but will be announced in the **Federal Register** when set.

Test Participation

I. Eligibility Requirements

In order to be eligible to participate in the DIS test, importers or brokers must be ACE entry summary filers. Interested participants should contact their client representative for additional information pertaining to participation in this test. Interested companies that do not currently have an assigned client representative should submit a Letter of Intent expressing their intent to participate in the DIS test so that client representatives can be assigned. Instructions for the preparation of the Letter of Intent can be found on the CBP

Web site at: *http://www.cbp.gov/xp/cgov/trade/automated/automated_systems/abi/getting_started/getting_started.xml*.

II. Rules for Submitting Images in Document Image System

The following rules will apply to all participants involved in the DIS testing process:

- Documents may be transmitted in DIS in response to a request for entry summary documentation or in response to a request for release documentation for certified ACE entry summaries.
- Unsolicited document submissions are not allowed; however, for the purposes of PGA forms and invoices/packing lists that are associated to ACE entry summaries certified for cargo release, the trade may submit the required documentation without a prior request by CBP or the participating government agency (PGA).
- Only documents that have been requested by CBP or the PGA should be transmitted to CBP. If a document is submitted that has not been requested by CBP, an error message will be returned indicating that the transaction for which the document was submitted does not have any pending document requests made by CBP or a PGA.
- The filer may only file documents that CBP can accept electronically. In this first phase of DIS, the documents CBP can accept electronically are noted below. If CBP cannot accept the additional information electronically, the filer must file the additional information by other means, which may be paper.
- For the purposes of this test, original documents must be retained and made available in paper, if requested by CBP or a PGA.
- For the purposes of this test phase, APHIS, EPA and NOAA forms can be submitted only with ACE entry summaries that are certified for release.

III. Documents Supported in the First Phase of the Test

The first test phase is limited to the transmission of documents specified in this notice. The CBP form and commercial documents supported in this first phase of the DIS test and covered by this notice are Commercial Invoices, Packing Lists, and Invoice Working Sheets. The PGA related forms and documents supported in this first phase of the DIS test and covered by this notice are as follows:

- TSCA Import Certification Form
- EPA Form 3520–21 Importation of Motor Vehicles and Engines (off road)
- EPA Form 3520–1 Importation of Motor Vehicles and Engines (on road)
- EPA Form 3540–1 Notice of Arrival of Pesticides and Devices
- EPA Pre-approved Vehicle/Engine Exemption Letter
- EPA Pesticide Label
- APHIS Ingredients List
- APHIS Phytosanitary Certificate
- APHIS Import Permit
- APHIS Transit Permit
- APHIS Notice of Arrival
- APHIS Pre-Clearance 203
- NOAA Form 370 Fisheries Certificate of Origin
- NOAA Toothfish Pre-Approval

Please be advised that this first phase of the DIS test is *limited to* the above CBP and PGA forms. Other forms may be referenced in the DIS Implementation Guidelines, but such forms are not eligible for the present DIS test.

IV. Recordkeeping

Any form or document submitted via DIS is an electronic copy of an original document that is subject to the recordkeeping requirements of 19 CFR Part 163. Every form or document transmitted through DIS must be a complete, accurate and unaltered copy of the original document.

V. Technical Specifications

Images must be submitted in an XML via Secure FTP, Secure Web Services, existing EDI ABI MQ interfaces. All responses back to the importer and/or broker will also be sent in the form of an XML message. There are no technical restrictions on the Multipurpose Internet Mail Extension (MIME) file types that DIS will accept; however, JPEG, GIF, PDF, MS Word Documents, and MS Excel Spreadsheets are preferred. Additional information pertaining to technical specifications (see DIS Implementation Guidelines) can be accessed on CBP.gov at the following link: *http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/catair_chapters/document_imaging_igs/*.

VI. Confidentiality

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law (*see* 19 U.S.C. 1431(c)). As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

VII. Waiver of Affected Regulations

Any provision in 19 CFR including, but not limited to, provisions found in parts 141, 142, 143, and 151 thereof relating to entry/entry summary processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test (*see* 19 CFR 101.9(b)). The DIS Implementation Guidelines and Customs and Trade Automated Interface Requirements (CATAIR) should be consulted for appropriate terms and definitions for purposes of this test. CATAIR documentation provides complete information describing how importers and/or their agents provide electronic import information and receive transmissions.

VIII. Misconduct Under the Test

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations.

Suspensions for misconduct will be administered by the Executive Director, Trade Policy and Programs, Office of International Trade, CBP Headquarters. A written notice proposing suspension will be issued to the participant that apprises the participant of the facts or conduct warranting suspension and informs the participant of the date the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of International Trade within 15 calendar days of the notification date. An appeal of a decision of proposed suspension must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, a suspension may be effective immediately.

IX. Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and conduct of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the *Customs Bulletin* as required by 19

CFR 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.

2. Questionnaires from both trade participants and CBP addressing such issues as:

- Workload impact (workload shifts/volume, cycle times, etc.).
- Cost savings (staff, interest, reduction in mailing costs, etc.).
- Policy and procedure accommodation.
- Trade compliance impact.
- Problem resolution.
- System efficiency.
- Operational efficiency.
- Other issues identified by the participant group.

X. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).

Dated: April 2, 2012.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–8246 Filed 4–5–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–37]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Philadelphia Housing Authority for the purchase and installation of Uniform Federal Accessibility Standards (UFAS)-compliant combination washer/dryer units for the Paschall Village Phase I and II project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on February 29, 2012, upon request of the Philadelphia Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Paschall Village Phase I and II project. The exception was granted by HUD on the basis that the relevant manufactured goods (UFAS-compliant combination washer/dryer units) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: March 29, 2012.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–8363 Filed 4–5–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–38]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an

exception was granted to the Wilmington Housing Authority for the purchase and installation of condensing tankless water heaters for the Southbridge project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4112, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on March 12, 2012, upon request of the Wilmington Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Southbridge project. The exception was granted by HUD on the basis that the relevant manufactured goods (condensing tankless water heaters) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: March 29, 2012.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–8362 Filed 4–5–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Steward B. McKinney Homeless Assistance Act, as amended, HUD publishes a weekly **Federal Register** notice listing unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless. HUD generally publishes this weekly report each Friday. Today's notice announces that because of the size of HUD's next report, the Office of the Federal Register has informed HUD that it cannot accommodate HUD's request to schedule publication of the report on Friday, April 6, 2012. As a result, HUD's next report listing unutilized, underutilized, excess, and surplus Federal property will be published in the **Federal Register** on April 20, 2012.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone number 202–708–1234; TTY number for the hearing- and speech-impaired 202–708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a weekly notice in the **Federal Register** listing Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties are reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. HUD's weekly notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

HUD generally publishes this notice each Friday. Today's notice announces that because of the size of HUD's next report, the Office of the Federal Register has informed HUD that it cannot accommodate HUD's request to schedule publication of the report on Friday, April 6, 2012. As a result, today's notice announces that HUD's next report listing unutilized, underutilized, excess, and surplus Federal property will be published in the **Federal Register** on April 20, 2012.

Dated: March 29, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2012–8215 Filed 4–5–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2012–N082; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before May 7, 2012.

ADDRESSES: Lisa Lierheimer, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Lierheimer, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: Friedel Ranch, Copperas Cove, TX; PRT—69093A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), Asian wild ass (*Equus hemionus*), barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), bontebok (*damaliscus pygargus pygargus*), and seladang (*Bos gaurus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Preserve II POA, Rocksprings, TX; PRT–65826A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Preserve II POA, Rocksprings, TX; PRT–69574A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Six Flags Discovery Kingdom, Vallejo, CA; PRT—676508

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:
Bengal tiger (*Panthera tigris tigris*).
Siberian tiger (*Panthera tigris altaica*).
Snow leopard (*Uncia uncia*).
Cheetah (*Acinonyx jubatus*).
Orangutan (*Pongo pygmaeus*).
Asian elephant (*Elephas maximus*).

Applicant: Bramble Park Zoo, Watertown, SD; PRT—685135

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Callithricidae.
Lemuridae.
Hylobatidae.
Genus:
Panthera.
Species:
Snow leopard (*Uncia uncia*).

Applicant: Lucky 7 Exotics Ranch, Eden, TX; PRT–70470A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lucky 7 Exotics Ranch, Eden, TX; PRT–70466A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and red lechwe (*Kobus leche*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Ferdinand Fercos Hantig and Anton Fercos Hantig, Las Vegas, NV; PRT–073403, 114454, and 206853

The applicant requests the re-issuance of their permits to re-export and re-import three captive born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species. The permit numbers and animals are 073403, Sherni; 114454, Dora; and 206853, Allaya. This notification covers activities to be conducted by the applicant over a 3-year period and the import of any potential progeny born while overseas.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Lee Anderson, Naples, FL; PRT–PRT–69571A.

Applicant: John Mikkelson, Northport, NY; PRT–70057A.

Applicant: Bruce N. Kobrin, Las Vegas, NV; PRT–70125A.

Dated: March 30, 2012.

Lisa Lierheimer,

Supervisory Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–8338 Filed 4–5–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N169; 40136–1265–0000–S3]

Bogue Chitto National Wildlife Refuge, LA and MS; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for Bogue Chitto National Wildlife Refuge (NWR) in St. Tammany and Washington Parishes, Louisiana, and Pearl River County, Mississippi. In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Daniel Breaux, Southeast Louisiana National Wildlife Refuge Complex, Bayou Lacombe Centre, 61389 Highway 434, Lacombe, LA 70445. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning/* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Breaux, at 985/882–2030 (telephone), 985/882–9133 (fax), or *BogueChitto@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Bogue Chitto NWR. We started this process through a notice in the **Federal Register** on February 20, 2009 (74 FR 7913). Please see that notice for more about the refuge.

We announce our decision and the availability of the final CCP and FONSI for Bogue Chitto NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6 (b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

Compatibility determinations are also available in the CCP for: (1) Wildlife observation/photography; (2) recreational fishing; (3) recreational hunting; (4) environmental education and interpretation activities; (5) walking, hiking, and jogging; (6) camping; (7) forest management; (8) scientific research; (9) kayaking and canoeing; (10) boating; (11) nuisance animal control; and (12) bicycling.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Established in 1980, Bogue Chitto NWR is one of eight refuges managed as part of the Southeast Louisiana National Wildlife Refuge Complex (Complex). The refuge headquarters is located about 9 miles northeast of Slidell, Louisiana. The 36,502-acre refuge is bisected by the Pearl River, with portions in St. Tammany and Washington Parishes, Louisiana, and Pearl River County, Mississippi. On the Mississippi side of the river, the refuge is bounded by Old River Wildlife Management Area (15,400 acres) to the north and by the State of Louisiana's Pearl River Wildlife Management Area (35,031 acres) to the south, thereby forming nearly an 87,000-acre block of protected forested wetlands and adjacent uplands within the Pearl River Basin.

The public has the opportunity to hunt white-tailed deer, squirrel, turkey, waterfowl, and hog. Fishing is also available. Threatened and endangered species found on the refuge are: Ringed map turtle (*Graptemys oculifera*), gopher tortoise (*Gopherus polyphemus*), inflated heelsplitter mussel (*Potamilus inflatus*), and gulf sturgeon (*Acipenser oxyrinchus desotoi*). Access is primarily by boat on the Louisiana side, with road access available on the Mississippi side. In 2002, the Holmes Bayou walking trail was unveiled on the Louisiana side of the refuge. This 3/4-mile walking trail offers a unique journey into the interior of the refuge's majestic habitat. The Pearl River Turnaround area is being developed as a site for education and interpretation, as well as a site for the annual youth fishing rodeo.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 27, 2011 (76 FR 30959). A news release was sent out to four local, State, and regional newspapers; six online media outlets; and two local radio networks. Copies of the Draft CCP/EA were posted at refuge headquarters and on the Service's Internet Web site and more than 100 copies were distributed to local landowners; the general public; and local, State, and Federal agencies. Respondents representing the Service, the Louisiana Department of Wildlife and Fisheries, and the National Park Service, as well as local citizens, submitted written comments by mail or email.

Selected Alternative

The Draft CCP/EA identified and evaluated three alternatives for managing the refuge over the next 15 years. After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative B for implementation.

Implementing Alternative B will be the most effective management action for meeting the purposes of the refuge. Monitoring and surveying will be conducted systematically after assessing which species should be targeted, based on their population status and the staff's ability to indicate health of important habitat. Restoration efforts, the fire program, and forest management will reflect best management practices determined after examination of historical regimes, soil types and elevation, and the current hydrological system. Management actions will be monitored for effectiveness and adapted to changing conditions, knowledge, and technology. A Habitat Management Plan will be developed for future habitat projects and to evaluate previous actions.

This alternative identifies Holmes Island as a proposed Wilderness Study Area. We will maintain its wilderness character and within 10 years of the date of the CCP, will prepare a wilderness study report and additional NEPA documentation on whether Holmes Island should be formally designated by Congress as a unit of the National Wilderness Preservation System.

Public use programs will be updated to educate visitors about the reasons for management actions, and to provide quality experiences for refuge visitors. The Complex headquarters in Lacombe, Louisiana, will provide additional information about the refuge. Options and opportunities will be explored to expand visitor contact areas on the refuge. In an increasingly developing region, Alternative B will strive to achieve a balanced program of wildlife-dependent recreational activities and protection of wildlife resources.

This alternative also proposes to add six positions to current staffing dedicated primarily to the refuge in order to continue to protect resources, provide visitor services, and attain facility and equipment maintenance goals.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 27, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–8292 Filed 4–5–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG01100–12–L13100000–EJ0000]

Notice of Availability of the Greater Natural Buttes Final Environmental Impact Statement, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act of 1969, Federal Land Policy and Management Act of 1976, and associated regulations, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) that evaluates, analyzes, and discloses to the public anticipated impacts of the Greater Natural Buttes proposal to develop natural gas in Uintah County, Utah. This notice announces a 30-day availability period prior to preparation of a Record of Decision (ROD).

DATES: The Final EIS will be available for 30 calendar days following the date on which the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Final EIS have been sent to affected Federal, state, and local government agencies and to other stakeholders. Copies of the Final EIS are available for public inspection at the BLM Vernal Field Office, 170 South 500 East, Vernal, Utah, and on the Internet at: *http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa_.html*.

FOR FURTHER INFORMATION CONTACT: For further information contact Stephanie Howard, Environmental Coordinator; telephone 435–781–4400; address 170 South 500 East, Vernal, Utah, 84078; email *BLM_UT_Vernal_Comments@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Greater Natural Buttes Project Area encompasses approximately 162,911 acres in the townships listed below in Uintah County, Utah:

Salt Lake Meridian

T. 8 S., R. 20–23 E.
T. 9 S., R. 20–24 E.
T. 10 S., R. 20–23 E.
T. 11 S., R. 21–22 E.

Kerr-McGee Oil & Gas Onshore LP (KMG), a wholly-owned subsidiary of Anadarko Petroleum Corporation, proposed this project to develop their existing oil and gas leases by drilling 3,675 wells from 3,041 new well pads over a period of 10 years. The proposed action would result in approximately 12,685 acres of additional disturbance (about 7.8 percent of the total project area). The total estimated surface disturbance under this alternative would be 25,125 acres, or about 15.4 percent of the project area. BLM's purpose and need for the project is to respond to KMG's proposal while minimizing environmental impacts.

In response to a proposal submitted by KMG (Alternative A) the BLM published in the October 5, 2007, **Federal Register** a Notice of Intent to prepare an EIS. The scoping comments received in response to this Notice were used during preparation of the Draft EIS to help identify impacts expected as a result of the proposed action and to develop Alternatives B and C.

A 45-day public comment period for the Draft EIS was held from July 16, 2010, through August 30 2010, as announced through the **Federal Register**. The Environmental Protection Agency (EPA) expressed concerns with the air quality analysis in the Draft EIS, so a Supplement to the Draft EIS was prepared by the BLM in close coordination with the EPA to address those concerns. A 45-day public comment period was then held from June 10, 2011, through July 25, 2011, for the Supplement to the Draft EIS, as announced through the **Federal Register**. An updated inventory of lands with wilderness characteristics was completed for the project area and lands with wilderness characteristics were identified. This information was analyzed in the draft EIS.

The BLM prepared the Final EIS in coordination with the Bureau of Indian Affairs and Uintah County, who participated as formal cooperating agencies during the EIS process. The BLM also closely coordinated with the United States Fish and Wildlife Service and the EPA to ensure their concerns were adequately addressed. The Final EIS describes the changes made between the Draft EIS and Final EIS, and includes responses to the comments

received during the public comment period.

Under the Resource Protection Alternative (the Agency Preferred Alternative), up to 3,675 new gas wells would be drilled from 1,484 new well pads over a period of 10 years, resulting in approximately 8,147 acres of additional disturbance (about 5.0 percent of the total project area). The total estimated surface disturbance under this alternative would be 20,615 acres, or about 12.7 percent of the project area. In coordination with the EPA, a Water Monitoring Plan was developed to address water quality impacts, and extensive applicant-committed measures, including an adaptive management strategy, were developed or refined to minimize air quality impacts.

This Final EIS is not a decision document. Following conclusion of the 30-day availability period, a ROD will be signed to disclose the BLM's final decision and any project Conditions of Approval. Availability of the ROD will be announced through local media, the BLM Vernal Web site, and the BLM's Utah Environmental Notification Bulletin Board.

Shelley J. Smith,

Acting Assoc. State Director.

[FR Doc. 2012–8247 Filed 4–5–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, in five sheets, representing the dependent resurvey and survey, in Township 18 South, Range 12 West, of the New Mexico Principal Meridian, accepted March 8, 2012, for Group 1104 NM.

The supplemental plat, creating new lots in section 5, in Township 18 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 6, in Township 18 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 4, in Township 18 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 3, in Township 18 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The plat, in ten sheets, representing the dependent resurvey and survey, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian, accepted March 8, 2012, for Group 1104 NM.

The supplemental plat, creating new lots in section3, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 4, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 9, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 15, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 10, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 16, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 20, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 21, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 22, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 23, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 27, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 28, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 29, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 30, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 31, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 32, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 33, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

The supplemental plat, creating new lots in section 35, in Township 17 South, Range 12 West, of the New Mexico Principal Meridian NM, accepted March 15, 2012.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *Marcella_Montoya@nm.blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register,** as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a

survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2012–8312 Filed 4–5–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–WRST–0112–9413; 98651C01SZP]

Record of Decision for the Nabesna Off-Road Vehicle Management Plan and Final Environmental Impact Statement, Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a record of decision for the Nabesna Off-Road Vehicle Management Plan and Final Environmental Impact Statement (FEIS), Wrangell-St. Elias National Park and Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Record of Decision (ROD) that documents decisions regarding off-road vehicle management in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The ROD describes the management actions, trail improvements, regulations, and mitigation (including monitoring) that will implement Alternative 6, identified in the FEIS as the preferred alternative. The ROD also describes the rationale used in making the decision and identifies the environmentally preferable alternative. The ROD includes a recommendation for the reclassification of eligible wilderness, which was approved by the NPS Director on January 18, 2012. The reclassification resulted in a net gain of 16,929 acres of eligible wilderness in the analysis area.

ADDRESSES: Copies of the ROD will be available for public review at *http://parkplanning.nps.gov/wrst.* Hard copies are available at park headquarters (Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, Alaska) or may be requested from Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION: The ROD describes management actions necessary for managing off-road vehicles (ORVs) for recreational and subsistence use on trails in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The trails were in existence at the time the 13.2-million-acre park and preserve was established in 1980. Beginning in 1983, the park issued permits for recreational ORV use of these established trails, initially in accordance with 36 CFR 13.14(c), which was replaced by 43 CFR 36.11(g)(2) in 1986. The trails also provide for subsistence ORV use and access to inholdings. On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and The Wilderness Society filed a lawsuit against NPS in the United States District Court for the District of Alaska regarding recreational ORV use on the nine trails that are the subject of this EIS. They challenged the NPS issuance of recreational ORV permits, asserting that NPS failed to make the required finding that recreational ORV use is compatible with the purposes and values of the Park and Preserve. They also claimed that the NPS failed to prepare an environmental analysis of recreational ORV use as required by NEPA.

In the May 15, 2007, settlement agreement, NPS agreed to endeavor to complete an EIS and ROD by December 31, 2010 (this was extended to December 31, 2011).

A Draft Environmental Impact Statement (DEIS) was published in August 2010 and made available for a 90-day public comment period. During the 90-day public comment period, five public meetings were held in Fairbanks, Anchorage, Tok, Slana, and Copper Center, Alaska. The NPS received 153 comment letters from various agencies, organizations, and individuals. In response to public comment, the FEIS analyzed a sixth alternative that was identified as the NPS preferred alternative and that combined elements of Alternatives 4 and 5 from the DEIS. Additionally, the FEIS responded to substantive comments in Chapter 5 and numerous changes were made in the FEIS as a result of public comment. The FEIS considered a reasonable range of alternatives based on project purpose and need and considering park resources and values, and public input.

Alternative 6 was identified as the NPS preferred alternative. All trails would be improved to at least a maintainable condition. After trail improvement, recreational ORV use would be permitted on trails in the national preserve (Suslota, Caribou Creek, Trail Creek, Lost Creek, Soda Lake, and Reeve Field) but not on trails in the national park (Boomerang, Tanada Lake, and Copper Lake). Subsistence ORV use would be subject to monitoring and adaptive management steps and would be confined to designated trail corridors in park wilderness.

FOR FURTHER INFORMATION CONTACT: Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone: 907–822–7276.

Tim A. Hudson,

Acting Regional Director, Alaska.

[FR Doc. 2012–8364 Filed 4–5–12; 8:45 am]

BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0412–9934; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 17, 2012. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 23, 2012. Before including your

address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Maricopa County

Alston, Dr. Lucius Charles, House, 453 N. Pima St., Mesa, 12000240

Pima County

Jefferson Park Historic District, Roughly bounded by Euclid, Grant, Campbell, & alley S. of Lester, Tucson, 12000241

COLORADO

Adams County

Fuller, Granville, House, 2027 Galena St., Aurora, 12000242

ILLINOIS

Cook County

Cermak Road Bridge Historic District, W. Cermak Rd. & S. Branch of Chicago R., Chicago, 12000243

IOWA

Marion County

Knoxville Veterans Administration Hospital Historic District (United States Second Generation Veterans Hospitals), 1515 W. Pleasant St., Knoxville, 12000246

KANSAS

Greenwood County

Jones, Paul, Building (Roadside Kansas MPS), 319 W. River St., Eureka, 12000247

Westside Service Station and Riverside Motel (Roadside Kansas MPS), 325 W. River St., Eureka, 12000248

Lyon County

Emporia Downtown Historic District, Generally bounded by 10th & 3rd Aves., Mechanic & Merchant Sts., Emporia, 12000249

MISSOURI

McDonald County

Old McDonald County Courthouse, 400 N. Main St., Pineville, 12000251

N. MARIANA ISLANDS

Rota Municipality

Chudang Palii Japanese World War II Defensive Complex, Sabena Rd., Sinapalu, 12000250

NEW YORK

Saratoga County

Mohawk Valley Grange Hall, 274 Sugar Hill Rd., Grooms Corners, 12000245

NORTH CAROLINA

Catawba County

Newton Downtown Historic District, Roughly bounded by 2nd & A Sts., N. Forney, & N. Ashe Aves., Newton, 12000253

NORTH DAKOTA

Billings County

Roosevelt's, Theodore, Elkhorn Ranch and Greater Elkhorn Ranchlands, Address Restricted, Medora, 12000252

[FR Doc. 2012–8250 Filed 4–5–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–756]

Certain Reduced Ignition Proclivity Cigarette Paper Wrappers and Products Containing Same Determination to Partially Review the Final Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to partially review the final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). The ALJ found no violation of section 337.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2011, based on a complaint filed by Schweitzer-Mauduit International, Inc. (''Schweitzer'') of Alpharetta, Georgia. 76 FR 4935 (January 27, 2011). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation of certain reduced ignition proclivity cigarette paper wrappers and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,878,753 (''the '753 patent'') and 6,725,867 (''the '867 patent''). The Commission's notice of investigation named Astra Tobacco Corporation of Chapel Hill, North Carolina; delfortgroup AG of Traun, Austria; LIPtec GmbH of Neidenfels, Germany; and Julius Glatz GmbH of Neidenfels, Germany as respondents.

On April 15, 2011, the Commission issued notice of its determination not to review an ID (Order No. 5) granting Schweitzer's motion to amend the complaint and notice of investigation to add seven more respondents: Dr. Franz Feurstein GmbH of Traun, Austria; Papierfabrik Wattens GmbH & Co. KG of Wattens, Austria; Dosal Tobacco Corp. of Miami, Florida; Farmer's Tobacco Co. of Cynthia, Kentucky; KneX Worldwide, LLC of Charlotte, North Carolina; S&M Brands, Inc. of Keysville, Virginia; Tantus Tobacco LLC of Russell Springs, Kentucky.

On December 1, 2011, the Commission determined not to review an ID (Order No. 30) of the administrative law judge terminating Respondents delfortgroup AG, Dr. Franz Feurstein GmbH, Papierfabrik Wattens GmbH & Co. KG, Astra Tobacco Corp., Dosal Tobacco Corp., Farmer's Tobacco Co., S&M Brands, Inc., and Tantus Tobacco LLC (collectively, the ''Delfort Respondents'') from the investigation. Respondents Julius Glatz GmbH, LIPtec GmbH, and KneX Worldwide LLC (collectively, ''Glatz'') remain in the investigation.

An evidentiary hearing was held from October 31, 2011, to November 8, 2011. On February 1, 2012, the presiding administrative law judge issued a final initial determination finding no violation of section 337 in the above-identified investigation. Specifically, the ALJ found that there was no violation with respect to either the '753 patent or the '867 patent by Glatz. The ALJ also issued a recommended

determination on remedy, the public interest, and bonding.

Schweitzer filed a petition for review of the final ID. Glatz filed a contingent petition for review. Each of the parties filed a response to the petitions for review.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to review the final ID as follows. With respect to the '753 patent, the Commission has determined to review the construction of the term ''gradually'' in the asserted claims and the issues of direct and indirect infringement, obviousness, definiteness, utility, and the technical prong of the domestic industry requirement in the ID. With respect to the '867 patent, the Commission has determined to review the construction of the term ''film forming composition'' in the asserted claims and the issues of direct and indirect infringement, priority date, statutory bar under 35 U.S.C. 102(b), anticipation, obviousness, written description, enablement, and the technical prong of the domestic industry requirement in the ID.

The parties are requested to brief their positions on only the following questions, with reference to the applicable law and the evidentiary record:

(1) In the asserted claims of the '753 patent, the ALJ defined the term ''gradually'' to mean ''incrementally.''

(a) Does the term ''incrementally'' carry a connotation of a change that occurs in discrete increments, such as in a staircase, that is unnecessarily limiting? In your answer, please address the reference to a ''ramp-like profile'' in dependent claim 3 and assume that the Commission concurs with the ALJ's determination that ''ramp-like profile'' refers to the physical shape of the claimed bands.

(b) Assuming that the term ''incrementally'' is unnecessarily limiting, would the term ''gradually'' be construed to mean an increase or decrease in permeability that occurs in small steps or degrees and that is not abrupt or sudden?

(c) How would a person of ordinary skill in the art distinguish between an increase or decrease that is in small steps or degrees from one that is abrupt or sudden? If such a person would be unable to make such a distinction, are the asserted claims indefinite as insufficient ''to permit a potential competitor to determine whether or not he is infringing''? *Exxon Research and Eng'g Co.* v. *United States,* 265 F.3d 1371, 1375 (Fed. Cir. 2001). What slopes would be considered gradual? For example, is a slope of 89 degrees considered gradual rather than abrupt? Please respond with citations to the record.

(d) Address how, if at all, adoption of the claim construction indicated in (b) above would affect the ALJ's analysis of infringement, validity, and the domestic industry.

(2) As to the '753 patent, what is the significance of points that fall entirely within the treated area?

(3) Is the iodine test an independent basis for establishing infringement of the asserted claims of the '753 patent and for satisfying the technical prong of the domestic industry requirement with respect to the '753 patent?

(4) The Commission has determined not to review the ALJ's construction of the term ''film forming composition'' as it appears in the asserted claims of the '753 patent. Is the Commission bound by the parties' stipulation that the term should be construed in the same way in the '867 patent? *See Exxon Chemical Patents* v. *Lubrizol Corp.,* 64 F.3d 1553, 1555 (Fed. Cir. 1995) (''In the exercise of that duty, the trial judge has an independent obligation to determine the meaning of the claims, notwithstanding the views asserted by the adversary parties.'').

(5) Assume for purposes of argument that the Commission is not bound by the stipulation, and note that the specification of the '753 patent but not the '867 patent contains the sentence ''Fibrous slurries applied from an aqueous solution are also effective.'' '753 patent at col. 4, ll.59–60. Does that distinction warrant a different outcome in construing ''film forming composition'' in the '867 patent?

(6) If ''applying'' in claim 36 of the '867 patent is construed to refer to both single applications and multiple applications, is claim 36 invalid for failure to satisfy the written description or enablement requirements of 35 U.S.C. 112?

(7) Did Schweitzer request samples of all accused products? On provision of the samples, were representations made by Glatz as to the representativeness of the samples provided? Did Schweitzer make further attempts to obtain samples of the other accused products? Please respond with a discussion of any relevant interrogatories, requests for production, motions practice (including motions to compel), and any pretrial conferences (excluding any settlement or mediation conferences).

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy,

the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on April 16, 2012. Written submissions should be no longer than 60 pages. Reply submissions must be filed no later than the close of business on April 23, 2012, and should be no longer than 30 pages. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42–210.46, 210.50(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42–210.46, 210.50(a)).

Dated: Issued: April 2, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8265 Filed 4–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–835]

Certain Food Containers, Cups, Plates, Cutlery, and Related Items and Packaging Thereof Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 6, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fabri-Kal Corporation of Kalamazoo, Michigan. A supplement to the complaint was filed on March 20, 2012. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food containers, cups, plates, cutlery, and related items and packaging thereof by reason of infringement of U.S. Trademark Registration No. 3,021,945 (''the '945 trademark''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 2, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain food containers, cups, plates, cutlery, and related items and packaging thereof that infringe the '945 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Fabri-Kal Corporation, 600 Plastics Place, Kalamazoo, MI 49001.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Green Wave International Inc., 112 12th Street, Brooklyn, NY 11215.

Trans World International (New York), Inc., 112 12th Street, Brooklyn, NY 11215.

John Calarese & Co., Inc., 89 Main Street, Suite 204, Medway, MA 02053.

Eco Greenwaves Corporation, 40 Montclaire Drive, Fremont, CA 94539.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and

the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 3, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8284 Filed 4–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–834]

Certain Mobile Electronic Devices Incorporating Haptics; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 2012, and an amended complaint was filed with the U.S. International Trade Commission on March 2, 2012 and a supplement was filed on March 15, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Immersion Corporation of San Jose, California. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices incorporating haptics by reason of infringement of certain claims of U.S. Patent No. 6,429,846 (''the '846 patent''); U.S. Patent No. 7,592,999 (''the '999 patent''); U.S. Patent No. 7,969,288 (''the '288 patent''); U.S. Patent No. 7,982,720 (''the '720 patent''); U.S. Patent No. 8,031,181 (''the '181 patent''); and U.S. Patent No. 8,059,105 (''the '105 patent''). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 2, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile electronic devices incorporating haptics that infringe one or more of claim 5 of the '846 patent; claims 1–3, 6, 8–11, and 13–16 of the '999 patent; claims 18–26 of the '288 patent; claims 1–8, 10–19, 22–25, and 27–33 of the '720 patent; claims 1–3, 5, 6, 8, 9, 11, 13, 15, 17–25, and 27–34 of the '181 patent; and claims 1–5, 7–15, and 18–21 of the '105 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Immersion Corporation, 30 Rio Robles, San Jose, CA 95134.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Motorola Mobility, Inc., 600 N. U.S. Highway 45, Libertyville, IL 60048.

Motorola Mobility Holdings, Inc., 600 N. U.S. Highway 45, Libertyville, IL 60048.

HTC Corporation, 23 Xinghua Road, Taoyuan, 330 Taiwan.

HTC America, Inc., 13920 SE. Eastgate Way, Suite 400, Bellevue, Washington 98005.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge; and

(4) The presiding Administrative Law Judge is directed to promptly issue an initial determination amending the notice of investigation upon complainant's request to reflect any changes to the '846 patent resulting from the issuance by the Patent and Trademark Office of a certificate of correction in response to the currently pending correction request.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint

and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 2, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8264 Filed 4–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–009]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 12, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–683 (Third Review) (Fresh Garlic from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 27, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 3, 2012.

By Order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8408 Filed 4–4–12; 11:15 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–010]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 13, 2012 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–489 and 731–TA–1201 (Preliminary) (Drawn Stainless Steel Sinks from China). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before April 16, 2012; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before April 23, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 3, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8407 Filed 4–4–12; 11:15 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 28, 2012, a proposed Consent Decree (''Consent Decree'') in *U.S.* v. *Coltec Industries, Inc., et al.,* Civil Action No. 1:10–cv–01659–ABJ, was lodged with the United States District Court for the District of Columbia.

In this action the United States, acting on behalf of the U.S. Environmental Protection Agency, filed a Complaint against Coltec Industries, Inc., a marine compression-ignition engine manufacturer, and National Steel and Shipbuilding Company, a marine vessel manufacturer (''Settling Defendants''), seeking civil penalties and injunctive relief for alleged non-compliance with Section 213 of the Clean Air Act, as amended, 42 U.S.C. 7547, and its implementing Marine Compression-Ignition Rules, at 40 CFR part 94. The Complaint alleges that Settling Defendants failed to comply with the certificate of conformity requirements by manufacturing or using uncertified and/or unlabeled or defectively labeled marine diesel engines in their respective operations.

The Consent Decree requires Settling Defendants to pay a $280,000 civil penalty to the United States. Settling Defendants will perform a Supplemental Environmental Project at an estimated cost of $500,000, which involves the installation of Selective Catalytic Reduction emissions control technology at a marine engine test stand operated at Settling Defendant Coltec Industries, Inc.'s marine engine manufacturing facility in Beloit, Wisconsin. They have also agreed to label or re-label the engines at issue in the Complaint with special certification labels that require Settling Defendants to treat the engines at issue as if they were originally certified under the Marine CI Engine Regulations, including complying with all applicable maintenance, repair, adjustment and recordkeeping requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Coltec Industries, Inc., et al.,* Civil Action No. 1:10–cv–01659–ABJ, D.J. Ref. 90–5–2–1–09942.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to

the Consent Decree Library at the address given above.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8334 Filed 4–5–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of information collection: FFL out-of-business records request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 20, page 4827 on January 31, 2012 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 7, 2012. This process is conducted in accordance with 5 CFR 1320.10

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Tracey Robertson at 304–616–4647.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* FFL Out-of-Business Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.3A. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Firearms licensees are required to keep records of acquisition and disposition. These records remain with the licensee as long as they are in business. The ATF F 5300.3A, FFL Out-of-Business Records Request is used by ATF to notify licensees who go out of business. When discontinuance of the business is absolute, such records shall be delivered within thirty days following the business discontinuance to the ATF Out-of-Business Records Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,285 respondents will take approximately 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 190.4 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2012–8357 Filed 4–5–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Homeless Veterans' Reintegration Program

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications. The full announcement is posted on *www.grants.gov.*

Funding Opportunity Number: SGA #01–12/PY 2012.

Key Dates: The closing date for receipt of applications is April 30, 2012.

Funding Opportunity Description: Section 2021 of Title 38 of the United States Code (U.S.C.) reauthorizes the Homeless Veterans Reintegration Program (HVRP) through fiscal year (FY) 2012 and indicates: ''the Secretary of Labor shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

HVRP grants are intended to address two objectives: (1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force, and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

The full Solicitation for Grant Application is posted on *www.grants.gov* under U.S. Department of Labor/VETS. Applications submitted through *www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed at Washington, DC, this 29th day of March 2012.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2012–8254 Filed 4–5–12; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday May 17, 2012. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE.; Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration.

8:45 a.m. Introductions, welcome, and brief review of agency developments.

9 a.m. Federal Advisory Committee Membership.

9:15 a.m. Employment Measures by Age of Firm.

10:15 a.m. Treatment of Contractors in BLS Data.

1 p.m. Prospectus on New Benefit Cost Measures.

2 p.m. Reinventing the *Monthly Labor Review.*

3:15 p.m. Brainstorming Session—suggestions for data or program improvements.

3:45 p.m. Meeting wrap-up.

4 p.m. The Shifting Composition of Workplace Injuries and Illnesses (extra/optional topic for interested members).

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202–691–6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed in Washington, DC, this 2nd day of April 2012.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2012–8320 Filed 4–5–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0010]

1,2-Dibromo-3-Chloropropane (DBCP) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified by the 1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).

DATES: Comments must be submitted (postmarked, sent, or received) by June 5, 2012.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal erulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0010, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2012–0010). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the DBCP Standard provide protection for workers from the adverse health effects associated with exposure to DBCP. In this regard, the DBCP Standard requires employers to: Monitor workers' exposure to DBCP; monitor worker health, and provide workers with information about their exposures and the health effects of exposure to DBCP.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

After extensive research, OSHA found no U.S. employer who currently produce DBCP or DBCP-based end-use products, most likely because the Environmental Protection Agency (EPA) registration suspension for this substance remains in effect; therefore, no cost or time burdens accrue to employers under the Standard. The Agency requests one hour for OMB to approve the information collection provisions of the Standard so that it can enforce the paperwork requirements of the Standard if EPA lifts the suspension or technology develops new applications for DBCP.

Type of Review: Extension of a currently approved collection.

Title: 1, 2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).

OMB Control Number: 1218–0101.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time Per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal erulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0010. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 3, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–8331 Filed 4–5–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–026)]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, May 1, 2012, 8:30 a.m. to 5 p.m., and Wednesday, May 2, 2012, 8:30 a.m. to 3:15 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–1377, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Technology Development Needs for Planetary Protection
—Planetary Protection for Icy Bodies in the Solar System
—Current Status of NASA's Planetary Protection Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport

information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–1377. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–8346 Filed 4–5–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–027)]

NASA Advisory Council; Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Commercial Space Committee of the NASA Advisory Council.

DATES: Tuesday, May 1, 2012, 8 a.m.–2:45 p.m.; Local Time.

ADDRESSES: Ohio Aerospace Institute (OAI); 22800 Cedar Point Road; Conference Room: The President's Room; Cleveland, OH 44142.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Rathjen, Human Exploration and Operations Mission Directorate, National Aeronautics and Space Administration Headquarters, 300 E Street SW., Washington, DC 20546, 202–358–0552; *thomas.w.rathjen-1@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Overview of Glenn Research Center's Commercial Space Activities and Plans
- Overview of Langley Research Center's Commercial Space Activities and Plans
- Overview of Johnson Space Center's Commercial Space Activities and Plans
- Commercial Crew Program Certification Phase Strategy
- Federal Aviation Administration Center of Excellence for Commercial Space Transportation
- Office of Safety and Mission Assurance Comments on Transition to Commercial Space

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial access number, 1–866–692–3158 or 1–203–418–3123 and then enter the numeric participant passcode: 5012012 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com/,* meeting number 999 344 641, and password NACCSC@0501. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. U.S. Citizens and Foreign Nationals can attend this meeting without prior registration. Parking at OAI is free and the public may begin entering the building at 7:45 a.m.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–8347 Filed 4–5–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

U.S. Antarctic Program Blue Ribbon Panel Review; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. Antarctic Program Blue Ribbon Panel Review, #76826.

Date/Time: April 20, 2012.

Open Session: 8 a.m. to 4 p.m.

Closed Session: 4 p.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of Meeting: Partially Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Panel will conduct an independent review of the current U.S. Antarctic Program to ensure the nation is pursuing the best twenty-year trajectory for conducting science and diplomacy in Antarctica—one that is environmentally sound, safe, innovative, affordable, sustainable, and consistent with the Antarctic Treaty.

Agenda: Present the Panel with additional programmatic information related to opportunities and challenges for Antarctic research and research support; discussion of findings and recommendations; planning for final report.

Reason for Closing: One session of the meeting is closed to the public because the Committee will review and discuss confidential commercial information and/or privileged intellectual property that if disclosed could harm the commercial interest of a submitter. The panel discussion could lead to premature disclosure of information that could significantly frustrate the Agency's implementation of proposed actions. Therefore this session is properly closed under exemptions 5 U.S.C. 552b(c), (4) and (9)(B) of the Government in the Sunshine Act.

Dated: April 3, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–8333 Filed 4–5–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Nanoscale Science and Engineering Center (NSEC) at the University of Wisconsin-Madison by the Division of Materials Research (DMR) #1203.

Dates & Times:

May 6, 2012; 4:45 p.m.–8 p.m.
May 7, 2012: 7:45 a.m.–8:30 p.m.
May 8, 2012: 8 a.m.–4:15 p.m.

Place: University of Wisconsin, Madison, WI.

Type of Meeting: Part open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning further support of the NSEC at the University of Wisconsin.

Agenda:

Sunday, May 6, 2012

4:45 p.m.–6 p.m. Closed—Executive Session
6 p.m.–8 p.m. Open—Poster session

Monday, May 7, 2012

7:45 a.m.–4:30 p.m. Open—Review of the NSEC
4:30 p.m.–6:15 p.m. Closed—Executive Session
6:15 p.m.–8:30 p.m. Open—Dinner

Tuesday, May 8, 2012

8 a.m.–9 a.m. Closed—Executive session
9 a.m.–10:45 a.m. Open—Review of the NSEC
10:45 a.m.–4:15 p.m. Closed—Executive Session, Draft and Review Report

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–8272 Filed 4–5–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Sunshine Act Meeting Cancellation

The National Transportation Safety Board has cancelled the Sunshine Act meeting previously scheduled for Tuesday, April 10, 2012, at the NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC. The matter scheduled to be considered at the Sunshine Act meeting concerned Safety Recommendations to the National Air Racing Group (NAG) Unlimited Division and Reno Air Racing Association (RARA) concerning the September 16, 2011, accident at the Reno National Championship Air Races (NCAR) in Reno, Nevada.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

Tuesday, April 3, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–8491 Filed 4–4–12; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293–LR; ASLBP No. 12–917–05–LR–BD01]

Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Entergy Nuclear Operations, Inc.

(Pilgrim Nuclear Power Station)

A Licensing Board is being established to consider a petition filed on March 8, 2012 by Jones River Watershed Association and by Pilgrim Watch seeking leave to reopen the record and request a hearing. Petitioners filed a correction and supplement to their petition on March 15, 2012. The petition pertains to the January 25, 2006 application from Entergy Nuclear Operations, Inc. to renew the current operating license for Pilgrim Nuclear Power Station, which expires on June 8, 2012, for an additional twenty years.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

The Commission has requested that the Board issue a decision on the motion to reopen and request for hearing as expeditiously as possible, and no later than May 29, 2012. *See* Memorandum from Andrew L. Bates, Acting Secretary, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Mar. 30, 2012).

Dated: Issued at Rockville, Maryland, this 2nd day of April 2012.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2012–8314 Filed 4–5–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30025]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 30, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2012. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 2012, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Value Line Convertible Fund, Inc.

[File No. 811–4258]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 16, 2011, applicant transferred its assets to Value Line Income and Growth Fund, Inc., based on net asset value. Expenses of $81,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund pro rata based on relative net asset value.

Filing Dates: The application was filed on January 18, 2012 and amended on March 8, 2012.

Applicant's Address: 7 Times Square, 21st Floor, New York, NY 10036.

UBS Equity Opportunity Fund, L.L.C.

[File No. 811–10269]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 23, 2011, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $11,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on March 9, 2012.

Applicant's Address: c/o UBS Alternative and Quantitative Investments LLC, 677 Washington BLVD., Stamford, CT 06901.

Tax Exempt Proceeds Fund Inc.

[File No. 811–5698]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $32,393 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on February 23, 2012.

BlackRock Short-Term Bond Series, Inc.

[File No. 811–10053]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 18, 2011, applicant transferred its assets to BlackRock Low Duration Bond Portfolio, a series of BlackRock Funds II, based on net asset value. Of approximately $444,386 in expenses incurred in connection with the reorganization, $292,335 were paid by applicant and $152,051 were paid by BlackRock Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on December 22, 2011 and amended on March 8, 2010.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Cash Assets Trust

[File No. 811–4066]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 5, 2012, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $88,505 incurred in connection with the liquidation were paid by Aquila Investment Management LLC, applicant's administrator and Asset Management Group of Bank of Hawaii, applicant's investment adviser.

Filing Dates: The application was filed on January 6, 2012 and amended on March 16, 2012.

Applicant's Address: 380 Madison Ave., Suite 2300, New York, NY 10017.

SunAmerica Focused Alpha Growth Fund, Inc.

[File No. 811–21770]

SunAmerica Focused Alpha Large-Cap Fund, Inc.

[File No. 811–21805]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On January 23, 2012, applicants transferred their assets to corresponding series of SunAmerica Specialty Series, based on net asset value. Expenses of approximately $344,850 and $337,100, respectively, incurred in connection with the reorganizations were paid by applicants.

Filing Date: The applications were filed March 7, 2012.

Applicants' Address: Harborside Financial Center, 3200 Plaza 5, Jersey City, NJ 07311–4992.

Munder Series Trust II

[File No. 811–7897]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 2011, applicant transferred its assets to Munder Series Trust, based on net asset value. Expenses of $101,474 incurred in connection with the reorganization were paid by Munder Capital Management, investment adviser to applicant and the acquiring fund.

Filing Dates: The application was filed on December 13, 2011, and amended on December 14, 2011, and March 7, 2012.

Applicant's Address: 480 Pierce St., Birmingham, MI 48009.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8262 Filed 4–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66713; File No. SR–EDGX–2012–08]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule 2.11 That Establish the Authority To Cancel Orders and Describe the Operation of an Error Account

April 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2012, EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.11 to (1) add a new subparagraph (a)(6) that addresses the authority of the Exchange and its routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route (''DE Route'') to cancel orders if and when a systems, technical or operational issue (herein, each individually referred to as a ''Systems Issue,'' and collectively referred to as ''Systems Issues'') occurs, and (2) amend subparagraph (a)(4) and add new subparagraph (a)(7) to describe the operation of an error account for DE Route. The text of the proposed rule change is available on the Exchange's Web site, at the Exchange's principal office and in the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2.11 by adding subparagraph (a)(6) to address the authority of the Exchange and DE Route to cancel orders when a Systems Issue occurs, and by amending subparagraph (a)(4) and adding subparagraph (a)(7) to describe the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

conditions under which DE Route may maintain and use an error account.[3]

DE Route is the approved outbound router of EDGX,[4] subject to the conditions listed in Rule 2.11. EDGX relies on DE Route to provide outbound routing services from EDGX to external market centers (each, a ''Trading Center'' [5]). The Exchange has also been approved to receive inbound routes of equities orders by DE Route from EDGA Exchange, Inc. for a pilot period ending on June 30, 2012.[6] When DE Route routes orders to a Trading Center, it does so by sending a corresponding order in its own name to the Trading Center. From time to time, the Exchange and DE Route encounter situations in which it becomes necessary to cancel orders and resolve an error position.[7]

Circumstances That Could Lead to Cancelled Orders

A Systems Issue may arise at DE Route, a Trading Center or the Exchange that may cause the Exchange or DE Route to take steps to cancel orders if the Exchange or DE Route determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or DE Route may decide to cancel orders.

Example 1. If DE Route or a Trading Center experiences a Systems Issue that results in DE Route not receiving responses to immediate or cancel (''IOC'') orders that it sent to the Trading Center, and that issue is not resolved in a timely manner, DE Route may need to cancel the routed orders affected by the issue.[8] For instance, if DE Route experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from Trading Centers, it may be unable to receive timely execution or cancellation reports from the Trading Centers, and DE Route may consequently seek to cancel the affected routed orders. Once a decision is made to cancel those routed orders, any cancellation that a Member submitted to the Exchange on its initial order during such a situation would be honored.[9]

Example 2. If the Exchange experiences a Systems Issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected Members of the cancellations. In those cases, the Exchange would seek to cancel, via DE Route, any routed orders related to the Members' initial orders.

Circumstances That Could Lead to an Error Position

An error position can arise out of Systems Issues experienced by DE Route, the Exchange or a Trading Center. Connectivity and order processing related issues are the most common types of Systems Issues that DE Route would expect could result in an error position. Connectivity issues, for example, would entail problems with the manner in which DE Route sends or receives order, execution and cancellation messages to or from other Trading Centers. Connectivity issues could arise either from DE Route's systems or from the Trading Center's systems. For example, if DE Route's connection to a Trading Center is interrupted after delivering an order, DE Route may be unable to receive a timely execution report from the Trading Center, and as a consequence may cancel the Member's order. But DE Route may later discover after the connection was restored that the order was actually executed by the Trading Center, resulting in an error position. Similarly, if the Trading Center attempted to cancel all open orders that it had previously accepted due to a Systems Issue, but either transmitted cancellations on orders that had previously been executed, or subsequently submitted executions of the orders to The Depository Trust Clearing Corporation (''DTCC'') for clearance and settlement, an error position would result.

An error position might also result if DE Route failed to process order messages correctly. For example, if DE Route's connection to the Exchange is temporarily interrupted and DE Route were to erroneously re-route orders that had previously been executed after the connection was restored, DE Route will have received executions of orders where there were effectively no corresponding orders on the Exchange. In this case, the executions would not necessarily be nullified since DE Route is a regular member of other Trading Centers and is therefore subject to those venues' policies for honoring trades.[10]

A Systems Issue experienced by the Exchange could also result in an error position relating to a routed order. For example, if an order were routed from the Exchange to a Trading Center by DE Route, and then due to a Systems Issue the Exchange would not accept the resulting execution of the order (but rather transmitted a cancellation to the Member instead), an error position would result. Another example might be where a Systems Issue experienced by the Exchange automatically changed the number of shares associated with all orders from one or more Members, or all orders in one or more symbols (in either case resulting in overfills), or changed the symbol on one or more orders (resulting in executions in the wrong stocks), where such orders were routed by DE Route to a Trading Center for execution.[11]

Assignment Methodology

Regardless of how an error position arose, DE Route would not typically learn about an error position until the next business day following the trade date, usually (but not exclusively) during the clearing process when a Trading Center has submitted to DTCC a transaction for clearance and

[3] DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Commission rule changes and fees relating to DE Route's outbound router function. In addition, EDGX is using the phrase ''the Exchange or DE Route'' in this rule filing to reflect the fact that a decision to cancel orders affected by Systems Issue may be made by the Exchange or DE Route depending on where those orders are located at the time of that decision.

[4] *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

[5] As defined in EDGX Rule 2.11(a) and Rule 600(b)(78) of Regulation NMS under the Securities Exchange Act of 1934 (the ''Act''), 17 CFR 242.600(b)(78).

[6] *See* Release No. 61698 at n. 4. *See also* Securities Exchange Act Release No. 64361 (April 28, 2011), 76 FR 25388 (May 4, 2011) (SR–EDGX–2011–12); *see also* SR–EDGX–2012–09 (March 16, 2012) (pending filing to extend the pilot period through June 30, 2013).

[7] The examples described in this filing are not intended to be exclusive. Proposed subparagraph (a)(6) of EDGX Rule 2.11 would provide general authority for the Exchange or DE Route to cancel orders in order to maintain fair and orderly markets when Systems Issues are occurring, and proposed subparagraph (a)(7) of Rule 2.11 would set forth the manner in which an error position may be handled by DE Route. The proposed rule changes are not limited to addressing order cancellation or an error position resulting only from the specific examples described in this filing.

[8] In a normal situation (*i.e.,* one in which a Systems Issue does not exist), DE Route should receive an immediate response to an IOC order from a Trading Center, and would pass the resulting fill or cancellation on to the Member. After submitting an order that is routed to a Trading Center, if a Member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the Trading Center. For instance, if the Trading Center executes that order, the execution would be passed on to the Member and the cancellation instruction would be disregarded.

[9] If a Member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor DE Route would treat any execution of that initial order or any subsequent routed order related to that initial order as an error position.

[10] *See, e.g.,* Nasdaq Rule 4627 (stating that all members must honor trades); BATS Rule 11.15(b); and NSX Rule 11.17(b) (both stating that transactions are locked-in and automatically processed for clearance and settlement).

[11] This discussion of potential scenarios that could lead to an error position is not intended to be an exhaustive list of all scenarios, but rather is just illustrative. The Exchange cannot anticipate every scenario, but does acknowledge that the types of error positions that might warrant use by DE Route of an error account would be limited to those arising from Systems Issues, as defined herein, which resulted in erroneous executions occurring on one or more Trading Centers.

settlement of which DE Route had not received an execution confirmation. Nonetheless, if DE Route reasonably determines that it has accurate and sufficient information, and a sufficient amount of time, it will assign the full amount of the resulting error position to one or more Members. For example, if Member A placed an order to buy 100 shares of symbol XYZ, and a Systems Issue caused DE Route to route an order for the wrong number of shares (*e.g.,* 1000 shares), or route an order for the correct number of shares but in the wrong symbol (*e.g.,* symbol XYY instead of XYZ), then, in either situation, DE Route would assign to Member A the full amount of the resulting error position (in the above examples, 1000 shares of XYZ, of which 900 shares would be the error position, or 100 shares of XYY, respectively). Under these circumstances, because the error position would have been caused by an Exchange or DE Route's Systems Issue, Member A would be permitted to submit a claim for reimbursement pursuant to EDGX Rule 11.12 to the extent that Member A incurred a loss after trading out of the error position.

The foregoing assignment methodology is designed to ensure that an error position is assigned to Members in a non-discriminatory manner. Thus, if DE Route reasonably concludes that it is unable to trace each erroneous execution comprising an error position back to one or more Members' orders, then DE Route will assume the entire amount of the error position in the error account. Moreover, if DE Route reasonably concludes, due to the number of erroneous executions and/or the number of Members potentially impacted, that it would not be able to trace each erroneous execution comprising an error position back to such Members in a timely manner (which will be defined to mean by the first business day following the trade date on which the error position was established, or ''T+1''), then DE Route will assume the entire amount of the error position in the error account. When an error position is acquired into DE Route's error account, it will then be liquidated as soon as practicable pursuant to proposed paragraph (a)(7) of Rule 2.11.

Proposed Changes to Exchange Rule 2.11

The Exchange proposes to amend EDGX Rule 2.11 to amend subparagraph (a)(4) and add new subparagraphs (a)(6) and (a)(7) to address the cancellation of orders due to Systems Issues and the use of an error account by DE Route, respectively.

Specifically, under proposed subparagraph (a)(6), the Exchange or DE Route would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a Systems Issue occurred at the Exchange, DE Route or a Trading Center.[12] The Exchange or DE Route would be required to provide notice of the cancellation to affected Members as soon as practicable.

Under amended subparagraph (a)(4) and new subparagraph (a)(7), DE Route would be authorized, when providing routing services to the Exchange, to maintain an error account for the purpose of liquidating an error position acquired as a result of Systems Issues experienced either by DE Route itself, the Exchange or at a Trading Center, as described above. The rule amendments provide that DE Route would only assume an error position in the error account under documented circumstances when the error position could not fairly and practicably be assigned to one or more Members.

With proposed new subparagraph (a)(7) of Rule 2.11, the Exchange is proposing that DE Route would consider the following factors in determining whether the entire amount of an error position can be fairly and practicably assigned to one or more Members: (i) Whether DE Route has accurate and sufficient information to trace each erroneous execution comprising an error position back to one or more Members' orders; and (ii) whether DE Route is able to review available information in order to assign the entire amount of an error position to all affected Members by the first business day following the trade date on which the error position was created (considering, among other factors, the size of the error position and the total number of Members potentially impacted). If as a result of the foregoing, DE Route reasonably concludes that the entire amount of an error position can be assigned to one or more Members in a timely and non-discriminatory manner, the entire amount of the error position will accordingly be assigned to such Members.[13] An example of this might be where a Systems Issue of limited scope or duration occurred at a Trading Center, and the resulting trades submitted for clearance and settlement by such Trading Center to DTCC, coupled with the number of Member orders transmitted during that same time period or possessing similar, traceable characteristics, are adequately manageable so as to allow a sufficient amount of time to match the error position with Members' orders in a non-discriminatory fashion.

There may be scenarios, however, in which the entire amount of a particular error position resulting from a Systems Issue cannot be assigned to Members, or cannot be assigned to Members in a non-discriminatory manner. For example, in the event that there is insufficient and/or inaccurate information, or the routed order that led to an erroneous execution could not be attributed to a Member's order, then DE Route would not be able to trace erroneous executions back to a Member's order. Also, if the information available would enable tracing of some, but not all, of the erroneous executions comprising an error position to Members, then the Exchange believes that assigning only a portion of an error position to Members might unfairly discriminate against those Members. In these circumstances, therefore, DE Route may reasonably conclude, pursuant to the factors set forth in proposed Rule 2.11(a)(7), that it cannot assign the entire amount of an error position to one or more Members, or cannot assign it in a non-discriminatory manner, and must instead acquire the entire amount of the error position into the error account.

There may also be scenarios in which the entire amount of a particular error position resulting from a Systems Issue cannot practicably be assigned to Members in a timely manner. For example, the number of erroneous executions comprising an error position, and/or the number of Members potentially impacted, could be such that the research necessary to trace all of the erroneous executions comprising the error position back to particular Members' orders could reasonably be expected to extend beyond T+1. The Exchange believes that assigning an error position to a Member beyond T+1 significantly increases the potential for disruptions in the normal clearance and settlement process,[14] and also could result in adverse regulatory consequences for affected Members (*e.g.,* their compliance with Rule 15c3–

[12] Such a situation may not cause the Exchange to declare self-help against the Trading Center pursuant to Rule 611 of Regulation NMS under the Act. If the Exchange or DE Route determines to cancel orders routed to a Trading Center under proposed subparagraph (a)(6), but does not declare self-help against that Trading Center, the Exchange would continue to be subject to the order protection requirements of Rule 611 with respect to that Trading Center.

[13] See examples listed under the section entitled ''Assignment Methodology,'' *supra.*

[14] Specifically, the Exchange believes that the likelihood of erroneous executions failing to settle within the normal clearance and settlement cycle would increase the closer in time to the settlement date that the error position was assigned to a Member.

1 under the Act). In these circumstances, therefore, DE Route may reasonably conclude, pursuant to the factors set forth in proposed Rule 2.11(a)(7), that it is not practicable to assign the entire amount of an error position to one or more Members by T+1, and must instead acquire the entire amount of the error position into the error account.

DE Route would be required to document the factors considered in determining to assume an error position in the error account. Similarly, if DE Route determined that an error position could be assigned to a particular Member in a timely fashion, then DE Route would be required to document the rationale for the assignment to that Member. The assignment of any error position to any one or more Members would be required to be done in a non-discriminatory fashion; this includes, for example, that the entire amount of an error position must be assigned to all Members to which such position could reasonably be attributed. If time would not permit a full analysis of all Members to which a position could be attributed, then DE Route would not assign any portion of the error position to Members, but would rather have to assume the error position in its error account. Documentation reflecting assignment of an error position to one or more Members shall reflect such methodology.

Proposed subparagraph (a)(7) would further describe the manner in which DE Route would liquidate an error position from the error account. When, as and if DE Route determined to book an error position to its error account, DE Route would be required to liquidate such error position as soon as practicable in a manner that would effectively confer investment discretion over the error position to a third-party broker-dealer. Specifically, DE Route would be required to: (i) Provide complete time and price discretion to the third-party broker-dealer in the liquidation of the error position, including that it would not be permitted to exercise any influence or control over the timing or methods of trading; and (ii) establish and implement written policies and procedures in accordance with paragraph (a)(7) that are reasonably designed to restrict the flow of any confidential and proprietary information associated with the liquidation of an error position between the Exchange and DE Route, on one hand, and the third-party broker-dealer, on the other.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, brokers or dealers. The Exchange believes that this proposal is in keeping with those principles since the Exchange's and DE Route's ability to cancel orders as a result of a Systems Issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing the Exchange or DE Route to cancel orders as a result of a Systems Issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing DE Route to assume a bona fide error position in an error account, and to liquidate the error position subject to the conditions set forth in the proposed amendments to Rule 2.11, would be the least disruptive means to correct the error position, except where it is practicable for DE Route to assign an error position to one or more Members of the Exchange. The proposed amendments are designed to ensure full trade certainty for market participants and avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling an error position in a manner that does not discriminate among Members. Finally, the proposed amendments are also consistent with Section 6 insofar as they would require DE Route to establish controls that are reasonably designed to restrict the flow of any confidential information associated with the liquidation of an error position between the Exchange and DE Route, on one hand, and the third-party broker-dealer, on the other.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2012–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–08 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8271 Filed 4–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66723; File No. SR–BATS–2012–014]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of BATS Global Markets, Inc.

April 3, 2012

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the certificate of incorporation of BATS Global Markets, Inc. (the ''Corporation'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the ''IPO''). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the ''New Certificate of Incorporation''). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[3] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. These additional amendments will be achieved through the filing with the State of Delaware of an Amended and Restated Certificate of Incorporation as well as a certificate of amendment to the Amended and Restated Certificate of Incorporation. The additional amendments are described in further detail below.

First, to avoid confusion in the numbering of its certificate of incorporation, rather than re-naming the New Certificate of Incorporation the ''Third Amended and Restated Certificate of Incorporation,'' the Corporation intends to simply name the New Certificate of Incorporation the ''Amended and Restated Certificate of Incorporation.'' Accordingly, the Exchange proposes to change certain references throughout the New Certificate of Incorporation to delete all references to the ''Second'' and ''Third'' Amended and Restated Certificate of Incorporation.

Second, the Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a 4.75-for-1 reverse stock split (the ''Reverse Stock Split'') of the outstanding shares of common stock of the Corporation (''Common Stock''). Accordingly, the number of authorized shares of the Corporation's, both in the aggregate and as set forth by class, as codified in Section 4.01 of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Reverse Stock Split. In light of the Reverse Stock Split, the proposed amendment also recalculates the share holding threshold below which a holder of Class B shares loses the right to hold Class B shares, resulting in those shares automatically converting into Class A shares, as set forth in Section 4.04(c)(v)(B) of the New Certificate of Incorporation. The par value of the Corporation's Common Stock will remain $0.01 per share.

Finally, the Exchange, on behalf of the Corporation, proposes to correct certain cross-referencing errors in Sections 5.01(c) and 5.01(d) of the certificate of incorporation.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation, as modified by this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely by the Corporation. The governance of the Exchange will

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR–BATS–2011–033).

continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) the chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has argued that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Corporation to immediately amend its certificate of incorporation to facilitate the Corporation's IPO, and because the proposed amendments would not impact the ownership or governance of the Exchange.[7] The Exchange has stated that the Corporation's IPO may occur in the near future, and that the changes described in this proposal are a critical component of such IPO. The Exchange has represented that a waiver of the operative waiting period will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange has also represented that the proposed amendments to the Corporation's certificate of incorporation would not impact the Corporation's existing governance structure or ownership and voting limitations or the Exchange's self-regulatory functions. Therefore, the Commission believes that a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2012–014 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8361 Filed 4–5–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] *See* SR–BATS–2012–014, Item 7.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66722; File No. SR–BYX–2012–007]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of BATS Global Markets, Inc.

April 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the certificate of incorporation of BATS Global Markets, Inc. (the ''Corporation'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the ''IPO''). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the ''New Certificate of Incorporation''). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[3] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. These additional amendments will be achieved through the filing with the State of Delaware of an Amended and Restated Certificate of Incorporation as well as a certificate of amendment to the Amended and Restated Certificate of Incorporation. The additional amendments are described in further detail below.

First, to avoid confusion in the numbering of its certificate of incorporation, rather than re-naming the New Certificate of Incorporation the ''Third Amended and Restated Certificate of Incorporation,'' the Corporation intends to simply name the New Certificate of Incorporation the ''Amended and Restated Certificate of Incorporation.'' Accordingly, the Exchange proposes to change certain references throughout the New Certificate of Incorporation to delete all references to the ''Second'' and ''Third'' Amended and Restated Certificate of Incorporation.

Second, the Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a 4.75-for-1 reverse stock split (the ''Reverse Stock Split'') of the outstanding shares of common stock of the Corporation (''Common Stock''). Accordingly, the number of authorized shares of the Corporation's, both in the aggregate and as set forth by class, as codified in Section 4.01 of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Reverse Stock Split. In light of the Reverse Stock Split, the proposed amendment also recalculates the share holding threshold below which a holder of Class B shares loses the right to hold Class B shares, resulting in those shares automatically converting into Class A shares, as set forth in Section 4.04(c)(v)(B) of the New Certificate of Incorporation. The par value of the Corporation's Common Stock will remain $0.01 per share.

Finally, the Exchange, on behalf of the Corporation, proposes to correct certain cross-referencing errors in Sections 5.01(c) and 5.01(d) of the certificate of incorporation.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation, as modified by this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) the chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR–BYX–2011–021).

[4] 15 U.S.C. 78f(b).

structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has argued that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Corporation to immediately amend its certificate of incorporation to facilitate the Corporation's IPO, and because the proposed amendments would not impact the ownership or governance of the Exchange.[7] The Exchange has stated that the Corporation's IPO may occur in the near future, and that the changes described in this proposal are a critical component of such IPO. The Exchange has represented that a waiver of the operative waiting period will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange has also represented that the proposed amendments to the Corporation's certificate of incorporation would not impact the Corporation's existing governance structure or ownership and voting limitations or the Exchange's self-regulatory functions. Therefore, the Commission believes that a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2012–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BYX–2012–007 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8360 Filed 4–5–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] *See* SR–BATS–2012–014, Item 7.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66715; File No. SR–OCC–2012–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Stock Loan Buy-In and Sell-Out Rules

April 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 22, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change would make procedural changes to certain stock loan buy-in and sell-out rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

As described below, OCC is proposing three procedural changes to certain rules relating to the Market Loan Program [3] and the Stock Loan/Hedge Program.[4]

First, OCC proposes to amend the buy-in and sell-out processes under the Market Loan Program. Under existing Rules, buy-in and sell-out transactions under the Market Loan Program would be executed by the relevant Loan Market using an independent broker. However, Clearing Members participating in the Market Loan Program have requested that the execution of such buy-in or sell-out transactions be left to the discretion of Lending Clearing Member or Borrowing Clearing Member, as applicable. OCC understands that Automated Equity Finance Markets, Inc. (''AQS''), the operator of the Loan Market supported by the Market Loan Program, supports the requested change and believes that allowing participants in the Market Loan Program to manage the buy-in and sell-out processes in the manner that they are accustomed to will foster the development of its marketplace. To accommodate such request, OCC proposes to amend Rule 2209A and Rule 2211A to update the buy-in and sell-out processes described therein and to redefine the respective rights, obligations, and responsibilities of OCC, Clearing Members and the relevant Loan Market in connection therewith.

More specifically, under existing rules where the Borrowing Clearing Member fails to return the specified quantity of loaned stock (or where the Lending Clearing Member fails to pay the settlement price with respect to the specified quantity of loaned stock), the relevant Loan Market will instruct an independent broker to execute a buy-in (or sell-out) of the loaned stock, and OCC will determine in its sole discretion, as between OCC and the clearing members, whether the costs of the transaction are reasonable. Under the proposed rules, as is the more common practice in connection with securities lending, instead of an independent broker the Lending Clearing Member (or the Borrowing Clearing Member) would determine if and when to execute a buy-in (or sell-out) of the loaned stock. Because the Clearing Member would have sole discretion with respect to execution of the buy-in (or sell-out) transaction, such Clearing Member would be required to defend the timeliness of the transaction and the reasonableness of the costs if such matters were challenged. OCC would have no responsibility with respect to the resolution unless OCC had suspended the Clearing Member. In connection with the foregoing proposed changes, OCC and AQS would amend and restate the Agreement for Clearing and Settlement Services between the parties (''AQS Agreement''). A copy of the amended and restated AQS Agreement is attached to the proposed rule change.[5]

Second, OCC proposes to amend the Rules governing the Stock Loan/Hedge Program to add a sell-out process. Currently, Rule 2209, which governs regular termination of stock loans under the Stock Loan/Hedge Program, does not describe a sell-out process. Although a sell-out process is described in Rule 2211, the scope of its application is limited by the context of Rule 2211, which specifically governs the close-out of stock loan positions of suspended Clearing Members. Therefore, OCC proposes to amend Rule 2209 to add a sell-out process that would apply in the context of regular termination of stock loans and to amend Rule 2211 to update the buy-in and sell-out processes described therein and to redefine the respective rights, obligations, and responsibilities of OCC and Clearing Members in connection therewith. Rule 2209 would also be amended to clarify when stock loans are terminated, including codifying a long standing process which has permitted Clearing Members to a stock loan to certify to OCC that they have terminated the stock loan and transferred the settlement price between themselves.

Third, OCC proposes to amend the Rules governing the Stock Loan/Hedge Program to add a cash settlement process. Under the Market Loan Program, if the Lending Clearing Member is unable to complete a buy-in, OCC has the discretion to fix a cash settlement value for the quantity of the loaned stock not returned to the Lending Clearing Member, thereby facilitating the termination of the relevant stock loan [see Rule 2209A(b)(3)]. However, currently OCC does not have the same option available under the Stock Loan/Hedge Program. Therefore, OCC proposes to amend Rule 2209 and Rule 2211, as appropriate, to include a cash settlement process identical to the process available under the Market Loan Program.

Finally, in addition to the procedural changes described above, OCC proposes to amend Rule 2202(b) to clarify that with respect to a stock loan that has been novated by OCC under the Stock Loan/Hedge Program, any terms of the original stock loan (other than terms that establish congruence) and any representations, warranties, and covenants made by the parties to the original stock loan with respect to such loan, to the extent that they do not conflict with OCC's By-Laws and Rules, shall remain in effect as between such parties. This change clarifies that, for example, the agreements of the parties to the original stock loan transaction with respect to dividend and rebate payments (which are not guaranteed by OCC in the Stock Loan/Hedge Program) are not affected by the provisions of OCC's By-Laws and Rules.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act, as amended, because they are designed to promote the prompt and accurate clearance and settlement of stock loans by permitting Clearing Members to manage the buy-in and sell-out processes in the manner that they are accustomed to and by providing OCC with the additional option of closing out stock loans through a cash settlement process, thereby fostering cooperation and coordination with persons engaged in the clearance and settlement of stock loans, and removing impediments to and perfecting the mechanism of a national system for the prompt and

[3] The Market Loan Program, governed by Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules, provides a framework that accommodates securities lending transactions executed through electronic trading systems (''Loan Markets'').

[4] The Stock Loan/Hedge Program, governed by Article XXI of OCC's By-Laws and Chapter XXII of OCC's Rules, allows approved clearing members to register their privately negotiated securities lending transactions with OCC.

[5] Attached to the proposed rule change as Exhibit 5A is a marked copy showing the changes between the original and amended and restated AQS Agreement. These supporting changes to the AQS Agreement principally are technical in nature. Technical changes also have been made to reflect the use of DTC's Dividend Service to effect settlement of certain cash dividends. See Exchange Act Release No. 34–60881 (October 26, 2009), 74 F.R. 56253 (October 30, 2009) [SR–OCC–2009–16].

accurate clearance and settlement of stock loans. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–OCC–2012–04 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–OCC–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_04.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–04 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66714; File No. SR–EDGA–2012–09]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule 2.11 That Establish the Authority To Cancel Orders and Describe the Operation of an Error Account

April 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2012, EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.11 to (1) add a new subparagraph (a)(6) that addresses the authority of the Exchange and its routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route (''DE Route'') to cancel orders if and when a systems, technical or operational issue (herein, each individually referred to as a ''Systems Issue,'' and collectively referred to as ''Systems Issues'') occurs, and (2) amend subparagraph (a)(4) and add new subparagraph (a)(7) to describe the operation of an error account for DE Route. The text of the proposed rule change is available on the Exchange's Web site, at the Exchange's principal office and in the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2.11 by adding subparagraph (a)(6) to address the authority of the Exchange and DE Route to cancel orders when a Systems Issue occurs, and by amending subparagraph (a)(4) and adding subparagraph (a)(7) to describe the conditions under which DE Route may maintain and use an error account.[3]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Commission rule changes and fees relating to DE Route's outbound router function. In addition, EDGA is using the phrase ''the Exchange or DE Route'' in this rule filing to reflect the fact that a decision to cancel orders affected by Systems Issue may be made by the Exchange or DE Route

Continued

DE Route is the approved outbound router of EDGA,[4] subject to the conditions listed in Rule 2.11. EDGA relies on DE Route to provide outbound routing services from EDGA to external market centers (each, a ''Trading Center'' [5]). The Exchange has also been approved to receive inbound routes of equities orders by DE Route from EDGX Exchange, Inc. for a pilot period ending on June 30, 2012.[6] When DE Route routes orders to a Trading Center, it does so by sending a corresponding order in its own name to the Trading Center. From time to time, the Exchange and DE Route encounter situations in which it becomes necessary to cancel orders and resolve an error position.[7]

Circumstances That Could Lead to Cancelled Orders

A Systems Issue may arise at DE Route, a Trading Center or the Exchange that may cause the Exchange or DE Route to take steps to cancel orders if the Exchange or DE Route determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or DE Route may decide to cancel orders.

Example 1. If DE Route or a Trading Center experiences a Systems Issue that results in DE Route not receiving responses to immediate or cancel (''IOC'') orders that it sent to the Trading Center, and that issue is not resolved in a timely manner, DE Route may need to cancel the routed orders affected by the issue.[8] For instance, if DE Route experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from Trading Centers, it may be unable to receive timely execution or cancellation reports from the Trading Centers, and DE Route may consequently seek to cancel the affected routed orders. Once a decision is made to cancel those routed orders, any cancellation that a Member submitted to the Exchange on its initial order during such a situation would be honored.[9]

Example 2. If the Exchange experiences a Systems Issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected Members of the cancellations. In those cases, the Exchange would seek to cancel, via DE Route, any routed orders related to the Members' initial orders.

Circumstances That Could Lead to an Error Position

An error position can arise out of Systems Issues experienced by DE Route, the Exchange or a Trading Center. Connectivity and order processing related issues are the most common types of Systems Issues that DE Route would expect could result in an error position. Connectivity issues, for example, would entail problems with the manner in which DE Route sends or receives order, execution and cancellation messages to or from other Trading Centers. Connectivity issues could arise either from DE Route's systems or from the Trading Center's systems. For example, if DE Route's connection to a Trading Center is interrupted after delivering an order, DE Route may be unable to receive a timely execution report from the Trading Center, and as a consequence may cancel the Member's order. But DE Route may later discover after the connection was restored that the order was actually executed by the Trading Center, resulting in an error position. Similarly, if the Trading Center attempted to cancel all open orders that it had previously accepted due to a Systems Issue, but either transmitted cancellations on orders that had previously been executed, or subsequently submitted executions of the orders to The Depository Trust Clearing Corporation (''DTCC'') for clearance and settlement, an error position would result.

An error position might also result if DE Route failed to process order messages correctly. For example, if DE Route's connection to the Exchange is temporarily interrupted and DE Route were to erroneously re-route orders that had previously been executed after the connection was restored, DE Route will have received executions of orders where there were effectively no corresponding orders on the Exchange. In this case, the executions would not necessarily be nullified since DE Route is a regular member of other Trading Centers and is therefore subject to those venues' policies for honoring trades.[10]

A Systems Issue experienced by the Exchange could also result in an error position relating to a routed order. For example, if an order were routed from the Exchange to a Trading Center by DE Route, and then due to a Systems Issue the Exchange would not accept the resulting execution of the order (but rather transmitted a cancellation to the Member instead), an error position would result. Another example might be where a Systems Issue experienced by the Exchange automatically changed the number of shares associated with all orders from one or more Members, or all orders in one or more symbols (in either case resulting in overfills), or changed the symbol on one or more orders (resulting in executions in the wrong stocks), where such orders were routed by DE Route to a Trading Center for execution.[11]

Assignment Methodology

Regardless of how an error position arose, DE Route would not typically learn about an error position until the next business day following the trade date, usually (but not exclusively) during the clearing process when a Trading Center has submitted to DTCC a transaction for clearance and settlement of which DE Route had not received an execution confirmation. Nonetheless, if DE Route reasonably determines that it has accurate and sufficient information, and a sufficient amount of time, it will assign the full amount of the resulting error position to one or more Members. For example, if Member A placed an order to buy 100 shares of symbol XYZ, and a Systems

depending on where those orders are located at the time of that decision.

[4] *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

[5] As defined in EDGA Rule 2.11(a) and Rule 600(b)(78) of Regulation NMS under the Securities Exchange Act of 1934 (the ''Act''), 17 CFR 242.600(b)(78).

[6] *See* Release No. 61698 at n. 4. *See also* Securities Exchange Act Release No. 64362 (April 28, 2011), 76 FR 25386 (May 4, 2011) (SR–EDGA–2011–13); *see also* SR–EDGA–2012–10 (March 16, 2012) (pending filing to extend the pilot period through June 30, 2013).

[7] The examples described in this filing are not intended to be exclusive. Proposed subparagraph (a)(6) of EDGA Rule 2.11 would provide general authority for the Exchange or DE Route to cancel orders in order to maintain fair and orderly markets when Systems Issues are occurring, and proposed subparagraph (a)(7) of Rule 2.11 would set forth the manner in which an error position may be handled by DE Route. The proposed rule changes are not limited to addressing order cancellation or an error position resulting only from the specific examples described in this filing.

[8] In a normal situation (*i.e.,* one in which a Systems Issue does not exist), DE Route should receive an immediate response to an IOC order from a Trading Center, and would pass the resulting fill or cancellation on to the Member. After submitting an order that is routed to a Trading Center, if a Member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the Trading Center. For instance, if the Trading Center executes that order, the execution would be passed on to the Member and the cancellation instruction would be disregarded.

[9] If a Member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor DE Route would treat any execution of that initial order or any subsequent routed order related to that initial order as an error position.

[10] *See, e.g.,* Nasdaq Rule 4627 (stating that all members must honor trades); BATS Rule 11.15(b); and NSX Rule 11.17(b) (both stating that transactions are locked-in and automatically processed for clearance and settlement).

[11] This discussion of potential scenarios that could lead to an error position is not intended to be an exhaustive list of all scenarios, but rather is just illustrative. The Exchange cannot anticipate every scenario, but does acknowledge that the types of error positions that might warrant use by DE Route of an error account would be limited to those arising from Systems Issues, as defined herein, which resulted in erroneous executions occurring on one or more Trading Centers.

Issue caused DE Route to route an order for the wrong number of shares (*e.g.,* 1000 shares), or route an order for the correct number of shares but in the wrong symbol (*e.g.,* symbol XYY instead of XYZ), then, in either situation, DE Route would assign to Member A the full amount of the resulting error position (in the above examples, 1000 shares of XYZ, of which 900 shares would be the error position, or 100 shares of XYY, respectively). Under these circumstances, because the error position would have been caused by an Exchange or DE Route's Systems Issue, Member A would be permitted to submit a claim for reimbursement pursuant to EDGA Rule 11.12 to the extent that Member A incurred a loss after trading out of the error position.

The foregoing assignment methodology is designed to ensure that an error position is assigned to Members in a non-discriminatory manner. Thus, if DE Route reasonably concludes that it is unable to trace each erroneous execution comprising an error position back to one or more Members' orders, then DE Route will assume the entire amount of the error position in the error account. Moreover, if DE Route reasonably concludes, due to the number of erroneous executions and/or the number of Members potentially impacted, that it would not be able to trace each erroneous execution comprising an error position back to such Members in a timely manner (which will be defined to mean by the first business day following the trade date on which the error position was established, or ''T+1''), then DE Route will assume the entire amount of the error position in the error account. When an error position is acquired into DE Route's error account, it will then be liquidated as soon as practicable pursuant to proposed paragraph (a)(7) of Rule 2.11.

Proposed Changes to Exchange Rule 2.11

The Exchange proposes to amend EDGA Rule 2.11 to amend subparagraph (a)(4) and add new subparagraphs (a)(6) and (a)(7) to address the cancellation of orders due to Systems Issues and the use of an error account by DE Route, respectively.

Specifically, under proposed subparagraph (a)(6), the Exchange or DE Route would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a Systems Issue occurred at the Exchange, DE Route or a Trading Center.[12] The Exchange or DE Route would be required to provide notice of the cancellation to affected Members as soon as practicable.

Under amended subparagraph (a)(4) and new subparagraph (a)(7), DE Route would be authorized, when providing routing services to the Exchange, to maintain an error account for the purpose of liquidating an error position acquired as a result of Systems Issues experienced either by DE Route itself, the Exchange or at a Trading Center, as described above. The rule amendments provide that DE Route would only assume an error position in the error account under documented circumstances when the error position could not fairly and practicably be assigned to one or more Members.

With proposed new subparagraph (a)(7) of Rule 2.11, the Exchange is proposing that DE Route would consider the following factors in determining whether the entire amount of an error position can be fairly and practicably assigned to one or more Members: (i) Whether DE Route has accurate and sufficient information to trace each erroneous execution comprising an error position back to one or more Members' orders; and (ii) whether DE Route is able to review available information in order to assign the entire amount of an error position to all affected Members by the first business day following the trade date on which the error position was created (considering, among other factors, the size of the error position and the total number of Members potentially impacted). If as a result of the foregoing, DE Route reasonably concludes that the entire amount of an error position can be assigned to one or more Members in a timely and non-discriminatory manner, the entire amount of the error position will accordingly be assigned to such Members.[13] An example of this might be where a Systems Issue of limited scope or duration occurred at a Trading Center, and the resulting trades submitted for clearance and settlement by such Trading Center to DTCC, coupled with the number of Member orders transmitted during that same time period or possessing similar, traceable characteristics, are adequately manageable so as to allow a sufficient amount of time to match the error position with Members' orders in a non-discriminatory fashion.

There may be scenarios, however, in which the entire amount of a particular error position resulting from a Systems Issue cannot be assigned to Members, or cannot be assigned to Members in a non-discriminatory manner. For example, in the event that there is insufficient and/or inaccurate information, or the routed order that led to an erroneous execution could not be attributed to a Member's order, then DE Route would not be able to trace erroneous executions back to a Member's order. Also, if the information available would enable tracing of some, but not all, of the erroneous executions comprising an error position to Members, then the Exchange believes that assigning only a portion of an error position to Members might unfairly discriminate against those Members. In these circumstances, therefore, DE Route may reasonably conclude, pursuant to the factors set forth in proposed Rule 2.11(a)(7), that it cannot assign the entire amount of an error position to one or more Members, or cannot assign it in a non-discriminatory manner, and must instead acquire the entire amount of the error position into the error account.

There may also be scenarios in which the entire amount of a particular error position resulting from a Systems Issue cannot practicably be assigned to Members in a timely manner. For example, the number of erroneous executions comprising an error position, and/or the number of Members potentially impacted, could be such that the research necessary to trace all of the erroneous executions comprising the error position back to particular Members' orders could reasonably be expected to extend beyond T+1. The Exchange believes that assigning an error position to a Member beyond T+1 significantly increases the potential for disruptions in the normal clearance and settlement process,[14] and also could result in adverse regulatory consequences for affected Members (*e.g.,* their compliance with Rule 15c3–1 under the Act). In these circumstances, therefore, DE Route may reasonably conclude, pursuant to the factors set forth in proposed Rule 2.11(a)(7), that it is not practicable to assign the entire amount of an error position to one or more Members by T+1, and must instead acquire the entire

[12] Such a situation may not cause the Exchange to declare self-help against the Trading Center pursuant to Rule 611 of Regulation NMS under the Act. If the Exchange or DE Route determines to cancel orders routed to a Trading Center under proposed subparagraph (a)(6), but does not declare self-help against that Trading Center, the Exchange would continue to be subject to the order protection requirements of Rule 611 with respect to that Trading Center.

[13] See examples listed under the section entitled ''Assignment Methodology,'' *supra.*

[14] Specifically, the Exchange believes that the likelihood of erroneous executions failing to settle within the normal clearance and settlement cycle would increase the closer in time to the settlement date that the error position was assigned to a Member.

amount of the error position into the error account.

DE Route would be required to document the factors considered in determining to assume an error position in the error account. Similarly, if DE Route determined that an error position could be assigned to a particular Member in a timely fashion, then DE Route would be required to document the rationale for the assignment to that Member. The assignment of any error position to any one or more Members would be required to be done in a non-discriminatory fashion; this includes, for example, that the entire amount of an error position must be assigned to all Members to which such position could reasonably be attributed. If time would not permit a full analysis of all Members to which a position could be attributed, then DE Route would not assign any portion of the error position to Members, but would rather have to assume the error position in its error account. Documentation reflecting assignment of an error position to one or more Members shall reflect such methodology.

Proposed subparagraph (a)(7) would further describe the manner in which DE Route would liquidate an error position from the error account. When, as and if DE Route determined to book an error position to its error account, DE Route would be required to liquidate such error position as soon as practicable in a manner that would effectively confer investment discretion over the error position to a third-party broker-dealer. Specifically, DE Route would be required to: (i) Provide complete time and price discretion to the third-party broker-dealer in the liquidation of the error position, including that it would not be permitted to exercise any influence or control over the timing or methods of trading; and (ii) establish and implement written policies and procedures in accordance with paragraph (a)(7) that are reasonably designed to restrict the flow of any confidential and proprietary information associated with the liquidation of an error position between the Exchange and DE Route, on one hand, and the third-party broker-dealer, on the other.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, brokers or dealers. The Exchange believes that this proposal is in keeping with those principles since the Exchange's and DE Route's ability to cancel orders as a result of a Systems Issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing the Exchange or DE Route to cancel orders as a result of a Systems Issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing DE Route to assume a bona fide error position in an error account, and to liquidate the error position subject to the conditions set forth in the proposed amendments to Rule 2.11, would be the least disruptive means to correct the error position, except where it is practicable for DE Route to assign an error position to one or more Members of the Exchange. The proposed amendments are designed to ensure full trade certainty for market participants and avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling an error position in a manner that does not discriminate among Members. Finally, the proposed amendments are also consistent with Section 6 insofar as they would require DE Route to establish controls that are reasonably designed to restrict the flow of any confidential information associated with the liquidation of an error position between the Exchange and DE Route, on one hand, and the third-party broker-dealer, on the other.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–09 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8269 Filed 4–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66711; File No. SR–PHLX–2012–44]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the FLEX No Minimum Value Pilot Program

April 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX index options and FLEX equity options (together known as ''FLEX Options'').[4]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX Options (the ''Pilot Program'' or ''Pilot'').

Rule 1079 deals with the process of listing and trading FLEX equity, index, and currency options on the Exchange. Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when a Request-for-Quote (''RFQ'') is submitted (except as provided in Commentary .01 to Rule 1079): (i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry index options; [6] (ii) the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities, with respect to FLEX equity options (together the ''minimum value size'').[7]

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending March 30, 2012, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) above.[8]

The Exchange now proposes to extend the Pilot Program for a period ending May 31, 2012.[9]

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant an extension. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Extension of the Pilot Program would continue to provide greater opportunities for traders and investors to manage risk through the use of FLEX Options, including investors that may otherwise trade in the unregulated over the counter (''OTC'') market where similar size restrictions do not apply.[10]

In support of the proposed extension of the Pilot Program, the Exchange has under separate cover submitted to the Commission a Pilot Program Report

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices; and may have expiration dates within five years. *See* Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX World Currency Options (''WCO'') or Foreign Currency Options (''FCO''). The pilot program discussed herein does not encompass FLEX currency options.

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] Market index options and industry index options are broad-based index options and narrow-based index options, respectively. *See* Rule 1000A(b)(11) and (12).

[7] Subsection (a)(8)(A) also provides a third alternative: (iii) 50 contracts in the case of FLEX currency options. However, this alternative is not part of the Pilot Program.

[8] *See* Securities Exchange Act Release No. 64108 (March 22, 2011), 76 FR 17174 (March 28, 2011) (SR–Phlx–2011–35) (notice of filing and immediate effectiveness of proposal to extend Pilot Program). The Pilot Program was instituted in 2010. *See* Securities Exchange Act Release No. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR–Phlx–2010–123)(notice of filing and immediate effectiveness of proposal to institute Pilot Program).

[9] The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10-contract FLEX equity option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

[10] The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

(''Report'') that provides an analysis of the Pilot Program covering the period during which the Pilot has been in effect. This Report includes: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options that have an opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX index options that have an opening transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (*i.e.,* institutional, high net worth, or retail). The Report has been submitted to the Commission on a confidential basis.

If, in the future, the Exchange proposes an additional extension of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Pilot Program, an additional Pilot Program Report covering the period during which the Pilot Program was in effect and including the details referenced in the prior paragraph. The Exchange will also provide the nominal dollar value of each trade. The Pilot Program Report would be submitted to the Commission at least one month prior to the expiration date of the Pilot Program unless the Commission agrees otherwise, and would be provided on a confidential basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. The Exchange notes that it has not experienced any adverse market effects with respect to the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would allow trading under the Pilot Program to continue on an uninterrupted basis, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PHLX–2012–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PHLX–2012–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

information that you wish to make available publicly.

All submissions should refer to File Number SR–PHLX–2012–44 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8261 Filed 4–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66710; File No. SR–NYSEAMEX–2012–12]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending the NYSE Amex Equities Definition of Approved Person To Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

April 2, 2012.

I. Introduction

On February 14, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the NYSE Amex Equities definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. The proposed rule change was published for comment in the **Federal Register** on March 1, 2012.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to amend the NYSE Amex Equities definition of ''approved person'' to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes.

The Exchange proposed to amend the definition of approved person in NYSE Amex Equities Rule 2 to revise the definition of which entities are deemed to be under ''common control'' with a member organization. The Exchange proposed to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

The Exchange proposed several additional amendments to its Rules. The Exchange proposed to amend NYSE Amex Equities Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties. The Exchange proposed to amend NYSE Amex Equities Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (''DMM'') unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit's member organization. The Exchange proposed to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.

The Exchange also proposed to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person, and accordingly, to remove all references to an approval process and the submission of an application for such approval from NYSE Amex Equities Rules 304, 308, and 311. The Exchange also proposed to eliminate use of the Forms AP–1 and AD–G.

The Exchange proposed to amend NYSE Amex Equities Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. The Exchange also proposed to make technical and conforming changes to other rules that reference the approved person application process.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange noted that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards.[7] As such, the Exchange believes that the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.[8] The Commission believes that the proposed rule change is consistent with the Exchange Act and should reduce the burdens on Exchange members while preserving the Exchange's jurisdiction over approved persons and maintaining appropriate controls over approved persons.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[9]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66463 (February 24, 2012), 77 FR 12637 (March 1, 2012) (''Notice'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] Notice, 77 FR at 12639.

[8] *Id.*

[9] 15 U.S.C. 78c(f).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEAMEX–2012–12) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8260 Filed 4–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66709; File No. SR–NYSE–2012–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending the Definition of Approved Person To Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

April 2, 2012.

I. Introduction

On February 14, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. The proposed rule change was published for comment in the **Federal Register** on March 1, 2012.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to amend the definition of ''approved person'' in NYSE Rule 2 to revise the definition of which entities are deemed to be under ''common control'' with a member organization.

The Exchange proposed several additional amendments to its Rules. The Exchange proposed to amend paragraphs (3) and (4) of NYSE Rule 21 to provide that a member of the Exchange's Board of Directors or an authorized committee who is associated with a member organization cannot participate in the deliberations concerning the listing of a security if the Director knows that an affiliate of the member organization directly or indirectly owns one percent or more of any class of stock of the issuer or has a contract, option, or privilege to purchase the security to be listed. The Exchange proposed to amend NYSE Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties. The Exchange proposed to amend NYSE Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (''DMM'') unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit's member organization. The Exchange proposed to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.

The Exchange also proposed to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person, and accordingly, to remove all references to an approval process and the submission of an application for such approval from NYSE Rules 304, 308, and 311. The Exchange also proposed to eliminate use of the Forms AP–1 and AD–G.

The Exchange proposed to amend NYSE Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. The Exchange also proposed to make technical and conforming changes to other rules.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange noted that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards.[7] As such, the Exchange believes that the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.[8] The Commission believes that the proposed rule change is consistent with the Exchange Act and should reduce the burdens on Exchange members while preserving the Exchange's jurisdiction over approved persons and maintaining appropriate controls over approved persons.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[9]

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66462 (February 24, 2012), 77 FR 12626 (March 1, 2012) (''Notice'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] Notice, 77 FR at 12628.

[8] *Id.*

[9] 15 U.S.C. 78c(f).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2012–06) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8259 Filed 4–5–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Praesidian Capital Opportunity Fund III, LP; License No. 02/02–0647; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Praesidian Capital Opportunity Fund III, LP, 419 Park Avenue South, New York, NY 10016, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, *Financings which Constitute Conflicts of Interest,* of the Small Business Administration Rules and Regulations (13 CFR 107.730). Praesidian Capital Opportunity Fund III, LP proposes to provide debt and preferred equity financing to CB Restaurants, Inc. The financing is follow-on financing contemplated to fund working capital and capital expenditures.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Praesidian Capital Opportunity Fund III–A, LP, Associate of Praesidian Capital Opportunity Fund III, LP, holds an ownership position in CB Restaurants, Inc. that exceeds 10%. Therefore the transaction is considered as providing financing to an Associate, requiring prior written exemption from the Small Business Administration.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: March 29, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–8326 Filed 4–5–12; 8:45 am]

BILLING CODE P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Region II Buffalo District Advisory Council. The meeting will be open to the public.

DATES: The meeting will be held on April 18, 2012 from approximately 9:30 a.m. to 11:30 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Transit Valley Country Club, 8920 Transit Road, East Amherst, New York 14051.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Region II Buffalo District Advisory Council. The Region II Buffalo District Advisory Council is tasked with providing information of public interest.

The purpose of the meeting is so the council can provide advice and opinions regarding the effectiveness of and need for SBA programs, particularly the local districts which members represent. The agenda will include: district office, SBA programs and services, government contracting, disaster updates, lending activity reports, small business week, event announcements, and roundtable discussion on small business issues.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Region II Buffalo District Advisory Council must contact Franklin J. Sciortino, district director, Buffalo district office by April 13, by fax or email in order to be placed on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551–4301 or fax (716) 551–4418.

Additionally, if you need accommodations because of a disability or require additional information, please contact Kelly Lotempio, EDS/PIO, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551–4301, *kelly.lotempio@sba.gov* or fax (716) 551–4418.

For more information on SBA, please visit our Web site at *www.sba.gov.*

Dated: March 26, 2012.

Dan Jones,

Committee Management Officer.

[FR Doc. 2012–8324 Filed 4–5–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, April 18, 2012 from 1 p.m. to approximately 4 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations. The purpose of the meeting is to discuss the SBA's Financial Reporting, Audit Findings Remediation, Ongoing OIG Audits including the Information Technology Audit, Recovery Act, FMFIA Assurance/A–123 Internal Control Program, Credit Modeling, LMAS Project Status, Performance Management, Acquisition Division Update, Improper Payments and current initiatives.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Jonathan Carver, by fax or email, in order to be placed on the agenda. Jonathan Carver, Chief

Financial Officer, 409 3rd Street SW., 6th Floor, Washington, DC 20416, phone: (202) 205–6449, fax: (202) 205–6969, email: *Jonathan.Carver@sba.gov.* Additionally, if you need accommodations because of a disability or require additional information, please contact Donna Wood at (202) 619–1608, email: *Donna.Wood@sba.gov;* SBA, Office of Chief Financial Officer, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html.*

Dan S. Jones,

White House Liaison.

[FR Doc. 2012–8325 Filed 4–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITS PAC) will hold a meeting by web conference on May 2, 2012, from 1 p.m. to 2 p.m. (EDT), to welcome new members and to provide the committee an overview of information essential to its functioning.

The ITS PAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-chartered on January 23, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office, the ITS PAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the web conference tentative agenda: (1) Welcome by RITA Acting Administrator; (2) Meeting purpose and agenda review; (3) Overview of ITS PAC purpose, roles, and responsibilities; (4) Overview of the ITS Joint Program Office organization, management, and mission; (5) Overview of the ITS Research Program; and (6) Brief ethics review.

Participation in the web conference is open to the public, but limited conference lines will be available on a first-come, first-served basis. Members of the public who wish to participate must notify Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126 not later than April 20, 2012, at which time the web conference URL and teleconference phone number will be provided. Members of the public may present oral statements at the meeting with Mr. Glasscock's approval. Persons wishing to present oral statements or obtain information should contact Mr. Glasscock.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE, HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS Joint Program Office requests that written comments be submitted prior to the meeting.

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR Part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 2nd day of April 2012.

Linda Dodge,

Chief of Staff, ITS Joint Program Office.

[FR Doc. 2012–8313 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Enabling a Secure Environment for Vehicle-to-Infrastructure Research Workshop; Notice of Public Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will hold a free public meeting on the Vehicle-to-Infrastructure (V2I) research program on April 18, 2012, 8:30 a.m.–3:30 p.m. at ITS America, 1100 17th Street NW., Suite 1200, Washington DC 20036, 202–484–4847. The meeting will also be available by webinar. Persons planning to attend the workshop or participate in the webinar should register online no later than April 15, 2012 at *http://www.itsa.org/v2i.*

This public meeting is being held in support of the V2I for Safety Program for Connected Vehicles Initiative lead by the ITS JPO. The meeting will allow primary stakeholders and subject matter experts to review concepts of how selected safety applications will work that involve infrastructure components. The outcome of this meeting will provide customer based feedback on how these safety applications can be developed to achieve maximum effectiveness while minimizing cost.

The purpose of the V2I program is to enable the development of vehicle based applications and safety systems that will assist drivers in avoiding crashes. As part of this program, FHWA's role is to develop roadside equipment and other enabling technologies that will enable these safety applications to function properly.

If you have any questions or you need any special accommodations, please send an email to Adam Hopps at *Ahopps@itsa.org.*

Issued in Washington, DC, on the 15th day of March 2012.

Shelley Row,

Director, ITS Joint Program Office.

[FR Doc. 2012–6775 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA)

Notice of Intent to Prepare an Environmental Impact Statement: Milwaukee and Ozaukee Counties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed freeway corridor improvement project on I–43 in Milwaukee and Ozaukee Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Bethaney Bacher-Gresock, Environmental Program Manager, FHWA Wisconsin Division Office, City Center West, 525 Junction Road, Suite 8000, Madison, WI 53717; Telephone: (608) 662–2119.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement (EIS) for proposed improvements in the I–43 corridor and adjacent interchanges in Milwaukee and Ozaukee Counties,

WI. The purpose of the project is to address emerging pavement and structural needs, safety issues and design deficiencies while identifying methods to accommodate existing and projected future traffic volumes; this may result in the full reconstruction and redesign of the I–43 corridor as well a potential new interchange at Highland Road. The EIS will evaluate the I–43 freeway corridor from I–43 at Hwy. 60 on the north and I–43 at Silver Spring Drive on the south, approximately 14 miles in length. The EIS will also evaluate the service interchanges and adjacent arterial roads in Milwaukee and Ozaukee Counties, including the following service interchanges Hwy. 60, CTH C, Hwy. 167/Mequon Road, partial interchange northbound to Port Washington Road and southbound from County Line Road, Hwy. 100/Brown Deer Road, Good Hope Road, and Silver Spring Drive interchanges. The EIS will be developed in accordance with 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508.

Public involvement is a critical component of the National Environmental Policy Act (NEPA) project development process and will occur throughout the development of the environmental documents. These documents will be made available for review by federal and state resource agencies and the public. Specific efforts to encourage involvement by, and solicit comments from, minority and low-income populations in the project study area will be made. A series of public information meetings will be held during the project study. Public notice will be given as to the time and place of all workshops and public information meetings. In addition, a public hearing will be held after the completion of the Draft EIS. Inquiries related to the I–43 Corridor project study can be sent to *DOTI43NorthSouth@dot.wi.gov,* and a public Web site will be maintained throughout the study for public comment and information at *http://www.sefreeways.org.* To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA address provided above.

Projects receiving Federal funds must comply with Title VI of the Civil Rights Act and Executive Order 12898 Federal Actions to Address Environmental Justice in Minority and Low-Income Populations. Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this project. It is also Federal policy to identify and address any disproportionately high and adverse effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 29, 2012.

Bethaney Bacher-Gresock,

Environmental Program Manager, Federal Highway Administration, Madison Wisconsin.

[FR Doc. 2012–8242 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA—2012–0081]

Qualification of Drivers; Application for Exemptions; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from four individuals for an exemption from the prohibition against persons with an implantable cardioverter defibrillator (ICD) in the Federal Motor Carrier Safety Regulations (FMCSRs), due to syncope or likelihood of causing any loss of ability to operate a commercial motor vehicle (CMV) safely. FMCSA requests public comments on these applications for an exemption. If granted, the exemption would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–(0081) using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Benisse Lester, M.D., Chief Medical Officer, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-( ), Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401] as amended 49 U.S.C. 31315 and 31136(e) provides authority to grant exemptions from many of the Federal Motor Carrier Safety

Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule implementing section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 381.300(b)). The four individuals listed in this notice have requested an exemption from the ICD prohibition in 49 CFR 391.41(b)(4), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(4) states that a person is physically qualified to drive a commercial motor vehicle if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions, procedures, and/or treatments should be certified to operate commercial motor vehicles in interstate commerce. The advisory criteria indicate that: The term ''has no current clinical diagnosis of'' (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term ''known to be accompanied by'' is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse, or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency rests with the medical examiner and the motor carrier.

The advisory criteria states that implantable cardioverter defibrillators are disqualifying due to risk of syncope. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver.

In the case of ICDs the underlying condition for which the device was placed may place the driver at risk for syncope or gradual or sudden incapacitation that may be likely to result in loss of ability to safely control a CMV. ICDs also may deploy inappropriately, which would result in loss of ability to safely control a CMV.

Individual Applications for Exemption—Qualifications

Donald Hively

Mr. Hively is a 52 year old commercial motor vehicle (CMV) driver who holds a class A commercial drivers license (CDL) from the state of Pennsylvania. Mr. Hively has driven a truck for 36 years. He had an ICD placed due to ventricular tachycardia and a low ejection fraction which improved. The device has deployed several times, most recently due to ventricular tachycardia in October 2011. Mr. Hively would like to continue to drive a truck in interstate commerce, if he is granted an exemption.

Richard Tadsen

Mr. Tadsen is a 72 year old CMV driver who holds a class B and class D CDL from the state of Iowa. Mr. Tadsen had an ICD placed in 2009, with a history that includes cardiomyopathy, low ejection fraction which has improved, and hypertension. He would like to obtain a CDL and drive a CMV in interstate commerce, if granted an exemption.

Richard Freund

Mr. Freund is a 59 year old CMV driver who holds a class C and class D CDL from the state of New Jersey. Mr. Freund had an ICD placed due to a congenital heart condition. His driving history has a Driving Under the Influence of Alcohol or Drugs (DUI) in 1988. He would like to obtain a CDL and drive a CMV in interstate commerce, as a courier transporting small packages for distances that are usually less than 100 miles, if granted an exemption.

Richard Rusk

Mr. Rusk is a 53 year old CMV driver who holds a class A CDL in Illinois. Mr. Rusk had an ICD placed in 2010 as part of a clinical trial for sarcoidosis. He has had no episode of syncope. The ICD has never deployed. His physician states that Mr. Rusk is at the lower risk end of persons with ICDs. Mr. Rusk would like to obtain a CDL and drive a CMV in interstate commerce, if granted an exemption.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 7, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–8372 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0382]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seventeen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in

interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 6, 2012. The exemptions expire on April 6, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On February 22, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from seventeen individuals and requested comments from the public (77 FR 10612). The public comment period closed on March 23, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the seventeen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These seventeen applicants have had ITDM over a range of 1 to 43 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the February 22, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the seventeen exemption applications, FMCSA exempts, Rick J. Birdsall (NE), Robert E. Bruso (NY), Roy Crabtree (IN), Steven L. Drake (CA), Benjamin J. Duea (MN), Steven E. Greer (MN), Jonathan E. Hunsaker (OR), Michael L. Jones (NC), William D. Larsen (SD), Michael W. Morofsky (CA), Antonio R. Ragin (CT), Lee A. Richardson (NC), Michael R. Simmons (TN), William W. Simmons (FL), Ronald O. Snyder (OH), Douglas J. Wood (NY) and Richard P. Wright (OR) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions

listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–8375 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0044]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 22 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0044 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 22 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Adele M. Aasen

Ms. Aasen, age 50, has had ITDM since 1971. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Aasen understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a Commercial Motor Vehicle (CMV) safely. Ms. Aasen meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from North Dakota.

David P. Altomer

Mr. Altomer, 52, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Altomer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Altomer meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from New York.

Steven W. Beaty

Mr. Beaty, 36, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beaty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beaty meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class 1 operator's license from South Dakota.

David D. Brown

Mr. Brown, 42, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Erik F. Brown

Mr. Brown, 46, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Michael R. Conley

Mr. Conley, 21, has had ITDM since 2002. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conley meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Emil H. Ellis, Jr.

Mr. Ellis, 58, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ellis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ellis meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Cecil E. Glenn

Mr. Glenn, 63, has had ITDM since 1991. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Glenn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Glenn meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Evan P. Hansen

Mr. Hansen, 55, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hansen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Todd A. Heitschmidt

Mr. Heitschmidt, 41, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heitschmidt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heitschmidt meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

John M. Kennedy

Mr. Kennedy, 57, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kennedy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kennedy meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Jeremy A. Ludolph

Mr. Ludolph, 21, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ludolph understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ludolph meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Bradley A. Marlow

Mr. Marlow, 50, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marlow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marlow meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Gerald N. Martinson

Mr. Martinson, 65, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martinson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martinson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Karl L. Price

Mr. Price, 52, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Price understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Price meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Mississippi.

Earl C. Saxton

Mr. Saxton, 49, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Saxton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saxton meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Alan J. Schipkowski

Mr. Schipkowski, 61, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schipkowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schipkowski meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

William H. Stone, Sr.

Mr. Stone, 71, has had ITDM since 2001. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stone meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Glenn D. Taylor

Mr. Taylor, 37, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taylor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taylor meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Richard E. Thomas

Mr. Thomas, 54, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Thomas R. Toews

Mr. Toews, 71, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Toews understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Toews meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

James E. Waller, III

Mr. Waller, 41, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Waller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waller meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: Issued on: April 2, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–8385 Filed 4–5–12; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0039]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0039 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical

Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 13 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Juan Castanon

Mr. Castanon, age 46, has complete loss of vision in his right due to a traumatic injury sustained at age 9. The visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''I feel that Mr. Castanon is able to drive a commercial vehicle without glasses safely.'' Mr. Castanon reported that he has driven straight trucks for 6 years, accumulating 2,304 miles. He holds a Class D operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

Donald F. Erke

Mr. Erke, 70, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''It is my medical opinion that Mr. Erke has sufficient vision to perform any and all driving tasks required to operate a commercial vehicle.'' Mr. Erke reported that he has driven straight trucks for 17 years, accumulating 1.5 million miles and tractor-trailer combinations for 25 years, accumulating 2.3 million miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald D. Flanery

Mr. Flanery, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2011, his ophthalmologist noted, ''Based upon my findings and medical expertise, I Daniel Ewen, MD hereby certify Ronald Flanery to be visually able to safely operate a commercial motor vehicle.'' Mr. Flanery reported that he has driven straight trucks for 15 years, accumulating 465,000 miles and tractor-trailer combinations for 5 years, accumulating 1,250 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows one crash, for which he was not cited and no convictions for moving violations in a CMV.

Mark G. Kleinheider

Mr. Kleinheider, 48, has a detached retina in his left due to a traumatic injury sustained in 1989. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''It is my medical opinion that Mark has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Kleinheider reported that he has driven straight trucks for 3 years, accumulating 60,000 miles and tractor-trailer combinations for 3 years, accumulating 15,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph C. Powell

Mr. Powell, 57, has complete loss of vision in his right due to a traumatic injury sustained 10 years ago. The visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''I certify that, in my medical opinion, Mr. Powell has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Powell reported that he has driven straight trucks for 15 years, accumulating 150,000 miles and tractor-trailer combinations for 35 years, accumulating 1.12 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 12 mph.

David L. Schachle

Mr. Schachle, 40, has a prosthetic right eye due to a traumatic injury sustained at 8 months old. The best corrected visual acuity in his left eye is 20/20. Mr. Schachle reported that he has driven straight trucks for 4 years, accumulating 120,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

Michael E. See

Mr. See, 55, has complete loss of vision in his right due to a traumatic injury sustained at age 3. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2011, his optometrist noted, ''I believe you have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. See reported that he has driven straight trucks for 30 years, accumulating 1.2 million miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. Settlemyre

Mr. Settlemyre, 59, has had esotropia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2011, his optometrist noted, ''In my medical opinion, I feel James Settlemyre has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Settlemyre reported that he has driven straight trucks for 8 years, accumulating 1 million miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven K. Simone

Mr. Simone, 61, has had keratoconus in his left eye for 30 years. The best corrected visual acuity in his right eye is 20/40, and in his left eye 20/400. Following an examination in 2011, his optometrist noted, ''I feel Steve is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Simone reported that he has driven straight trucks for 42 years, accumulating 3.4 million miles. He holds a Class C operator's license from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark J. Sobczyk

Mr. Sobczyk, 25, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200.

Following an examination in 2011, his ophthalmologist noted, ''I certify that Mark Sobczyk's ocular condition is satisfactory for operating commercial vehicles.'' Mr. Sobczyk reported that he has driven straight trucks for 5½ years, accumulating 206,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard D. Sparkman

Mr. Sparkman, 62, has complete loss of vision in his right due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''Based on the above information, I believe the patient has sufficient vision to perform the driving tasks required by his current commercial vehicle.'' Mr. Sparkman reported that he has driven straight trucks for 10 years, accumulating 520,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joshua A. Wheaton

Mr. Wheaton, 30, has a detached retina in his left due to a traumatic injury sustained in 1997. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2011, his optometrist noted, ''I feel that Joshua has more than adequate vision to perform any driving tasks required to operate a commercial vehicle.'' Mr. Wheaton reported that he has driven straight trucks for 5 years, accumulating 225,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John K. Wright

Mr. Wright, 47, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''This meets the vision requirement to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wright reported that he has driven straight trucks for 3½ years, accumulating 105,000 miles and tractor-trailer combinations for 6 months, accumulating 30,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 7, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 2, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–8384 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0087]

Unified Carrier Registration Plan Board of Directors; Request for Nominations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice: Request for Nominations from the Motor Carrier Industry to the Board of Directors.

SUMMARY: FMCSA solicits nominations and applications for appointment to the Board of Directors of the Unified Carrier Registration Plan (UCR Plan) of interested persons to serve as representatives of the motor carrier industry. The Agency will appoint five members from the motor carrier industry. The UCR Plan is responsible for the administration of the UCR Agreement. The UCR Agreement governs the registration and the collection and distribution of fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement replaced the Single State Registration System (SSRS), which was repealed as of January 1, 2008.

DATES: Nominations or expressions of interest for appointment to the Board of Directors must be received on or before May 7, 2012.

ADDRESSES: You may submit comments to this notice, identified by docket number FMCSA–2012–0087, by any of the following methods—Internet, facsimile, regular mail, or hand-delivery.

Federal eRulemaking Portal: Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov*. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the ''Comment'' or ''Submission'' section, type Docket ID Number ''FMCSA–2012–0087'', select ''Go'', and then click on ''Send a Comment or Submission.'' You will receive a tracking number when you submit a comment.

Fax: 1–202–493–2251.

Mail, Courier, or Hand-Deliver: U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA–2012–0087, and are available for inspection and copying on the Internet at *http://www.regulations.gov*. You may also view and copy documents at the U.S. Department of Transportation's Docket Operations Unit, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

FOR FURTHER INFORMATION CONTACT: Mr. Jose M. Rodriguez, Office of Research and Information Technology, (202) 366–3517, FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590 or by email at: *jose.rodriguez@dot.gov*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Background

Section 4305(b) of the Safe, Accountable, Flexible, Efficient

Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a entitled ''Unified carrier registration system plan and agreement.'' Under the UCR Agreement, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that are involved in interstate transportation register and pay certain fees. The UCR Plan's Board of Directors must issue rules and regulations to govern the UCR Agreement. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCR Agreement. Section 14504a(d)(1)(B) directed the Secretary to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State governments, and the motor carrier industry. The Board also must recommend initial annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA, as well as any annual adjustments to those fees. Section 14504a(d)(1)(B) provides that the UCR Plan's Board of Directors must consist of directors appointed by the Secretary as follows:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA 4 service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement. Nominees for these five directorships must be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

Motor Carrier Industry: Five directors must be from the motor carrier industry. At least one of the five motor carrier industry directors must be from ''a national trade association representing the general motor carrier of property industry'' and one of them must be from ''a motor carrier that falls within the smallest fleet fee bracket.''

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). In that notice, the Agency recognized the American Trucking Associations, Inc. (ATA) as the national trade association representing the general motor carrier of property industry. ATA is a national affiliation of State trucking organizations representing the national, State and local interests of the 50 affiliated State trucking associations; and the interests of specialized areas of the trucking industry through conferences and councils. The Agency selected the Owner-Operator Independent Drivers Association (OOIDA) as the organization from which to appoint an individual to represent motor carriers comprising the smallest fleet fee bracket. OOIDA is a national trade association representing the interests of small trucking companies and drivers.

Each of the five current directors from the motor carrier industry serves a term of 3 years that will expire on May 31, 2012. These directors may continue to serve until their replacements are appointed; each of them may be reappointed (49 U.S.C. 14504a(d)(1)(D)(iii) and (iv)). Today's publication serves as a notice requesting nominations for and public comment on possible appointment of the five members of the motor carrier industry in accordance with 49 U.S.C. 14504a(d).

Board Member Nominations

FMCSA seeks either nominations of, or expressions of interest from, individuals to serve as members of the board of directors for the UCR Plan from the motor carrier industry. Nominations or expressions of interest should indicate that the person nominated or recommended meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B)(iii). Nominations or expressions of interest must be transmitted by means of the procedures for comments specified earlier in this notice. FMCSA and the Department will make the appointments for the five members from the motor carrier industry for three-year terms, expiring on May 31, 2015. FMCSA and the Department will consider the objectives specified in the statute for the UCR Plan and Agreement when making the appointments.

Issued on: March 29, 2012.

Kelly Leone,

Associate Administrator, Research and Information Technology.

[FR Doc. 2012–8387 Filed 4–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35612]

Manning Grain Company; Acquisition and Operation Exemption; Fillmore Western Railway Company

Manning Grain Company (MGC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Fillmore Western Railway Company (FWRC) and operate a 7.1-mile rail line between its point of connection with BNSF Railway Company at milepost 8.1 at or near Fairmont and terminus at milepost 15.2 at or near Burress, in Fillmore County, Neb. (the Line).

The Line is part of an approximately 23.2-mile rail line (the Fairmont-Milligan line) that FWRC was authorized to abandon in *Fillmore Western Ry.—Aban. Exemption—in Fillmore Cnty., Neb.,* AB 492 (Sub-No. 2X) (STB served June 27, 2001). MGC acquired the Line from FWRC in 2005. MGC states that, at that time, it believed it was acquiring the Line as private industrial track, but that it since has learned that FWRC did not consummate its abandonment authority for the Fairmont-Milligan line by filing a notice of consummation. Thus, MGC states, it unknowingly became a rail carrier by virtue of its 2005 acquisition of the Line.[1]

The effective date of the exemption will be April 20, 2012 (30 days after the verified notice was filed).[2]

MGC certifies that its projected annual revenues as a result of this transaction will not exceed $5 million and will not exceed those that would qualify it as a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than April 13, 2012 (at least 7 days before the exemption becomes effective).

[1] In a notice of exemption filed on March 8, 2012, in Docket No. FD 35607, *Manning Rail, Inc.—Acquisition and Operation Exemption—Manning Grain Company,* Manning Rail, Inc., a noncarrier, seeks to acquire the line from MGC and operate it. That notice has been held in abeyance at the request of Manning Rail Inc. to permit it to investigate the history of the line.

[2] While the verified notice indicates that MGC is seeking an exemption to authorize the acquisition ''retroactively,'' MGC's authority will be effective prospectively from April 20, 2012.

An original and 10 copies of all pleadings, referring to Docket No. FD 35612, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 3, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–8358 Filed 4–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 3, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 7, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0019.

Type of Review: Revision of a currently approved collection.

Title: Suspicious Activity Report by Securities and Futures Industries and 31 CFR 1026.320 and 1023.320.

Abstract: Treasury is requiring certain securities broker-dealers, futures commission merchants and introducing brokers in commodities to file suspicious activity reports.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–8268 Filed 4–5–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning collection requirements related to travel expenses of state legislators.

DATES: Written comments should be received on or before June 5, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368 at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Travel Expenses of State Legislators.

OMB Number: 1545–2115.

Form Number: T.D. 9481.

Abstract: This document contains final regulations relating to travel expenses of state legislators while away from home. The regulations affect eligible state legislators who make the election under section 162(h) of the Internal Revenue Code (Code). The regulations clarify the amount of travel expenses that a state legislator may deduct under section 162(h).

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 7400.

Estimated Time per Respondent: .50 hours.

Estimated Total Annual Burden Hours: 3700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–8255 Filed 4–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

DATES: Written comments should be received on or before June 5, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joel Goldberger, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 927–9368 or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedures 2006–10.

Abstract: Revenue Procedure 2006–10 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 3 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 24,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–8257 Filed 4–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning collection requirements related to application of section 338 to insurance companies.

DATES: Written comments should be received on or before June 5, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application of section 338 to Insurance Companies.

OMB Number: 1545–1990.

Form Number: T.D. 9377.

Abstract: Final regulations and removal of temporary regulations.

This document contains final regulations under section 197 of the *Internal Revenue Code* (Code) that apply to a section 197 intangible resulting from an assumption reinsurance transaction, and under section 338 that apply to reserve increases after a deemed asset sale. The final regulations also provide guidance with respect to existing section 846(e) elections to use historical loss payment patterns. The final regulations apply to insurance companies.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 12.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–8263 Filed 4–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to Guidance Under Section 1502; Suspension of Losses on Certain Stock Disposition.

DATES: Written comments should be received on or before June 5, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance Under Section 1502; Suspension of Losses on Certain Stock Disposition.

OMB Number: 1545–1828.

Regulation Project Number: T.D. 9048.

Abstract: This document contains final and temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member. In addition, this document contains temporary regulations that suspend certain losses recognized on the disposition of stock of a subsidiary member. The regulations apply to corporations filing consolidated returns.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 15,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–8258 Filed 4–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (VR&E Longitudinal Study Survey)]

Agency Information Collection (Vocational Rehabilitation and Employment Longitudinal Study Survey); Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 -21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 7, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (VR&E Longitudinal Study Survey)'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise

McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (VR&E Longitudinal Study Survey)''.

SUPPLEMENTARY INFORMATION:

Title: Vocational Rehabilitation and Employment Longitudinal Study Survey.

OMB Control Number: 2900–New (VR&E Longitudinal Study Survey).

Type of Review: New data collection.

Abstract: As required by Public Law 110–389 Section 334, VBA will collect survey data on individuals who began participating in the VR&E program during fiscal years 2010, 2012, and 2014. VA will conduct a study of this data to determine the long-term positive outcomes of individuals participating in VBA's VR&E program. The purpose of this study is to monitor the effectiveness of VR&E program, so that we can find ways to improve the program and increase the support VA provide to Veterans on a daily basis.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 17, 2012, at pages 2349–2350.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 7,000.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8273 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0731]

Agency Information Collection (Conversion From Servicemembers' Group Life Insurance to Veterans' Group Life Insurance); Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 -21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 7, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0731'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: denise.mclamb@va.gov. Please refer to ''OMB Control No. 2900–0731.''

SUPPLEMENTARY INFORMATION:

Title: Independent Evaluation of the Conversion Privilege from Servicemembers' Group Life Insurance (SGLI) to Veterans' Group Life Insurance (VGLI) for Disabled Service Members.

OMB Control Number: 2900–0731.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected will be used to determine the appropriate target rate to convert claimants from SGLI to VGLI and to evaluate the effectiveness of current outreach practices.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2012, at page 3842.

Affected Public: Individuals or households.

Estimated Annual Burden: 413 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,216.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8274 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0682]

Proposed Information Collection (Advertising, Sales, and Enrollment Materials, and Candidate Handbooks) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that educational institutions or agents enrollment materials meet VA's guidelines for approval of courses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0682'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Advertising, Sales, and Enrollment Materials, and Candidate Handbooks, 38 CFR 21.4252(h).

OMB Control Number: 2900–0682.

Type of Review: Extension of a currently approved collection.

Abstract: VA approved educational institutions offering courses approved for the enrollment of Veterans, or eligible persons, and organizations or entities offering licensing or certification tests approved for payment of educational assistance as reimbursement to Veterans or eligible persons who took such tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks that educational institutions or its agents used during the preceding 12-month period. The materials are examined by VA and State Approving Agency employees to ensure that educational institutions or its agents are following VA approval guidelines.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,373 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 13,492.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8275 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0676]

Proposed Information Collection (National Acquisition Center Customer Response Survey) Activity; Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OAL), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to measure customer satisfaction with delivered products and services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) *www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics Programs and Policy (003A3A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *arita.tillman@va.gov*. Please refer to ''OMB Control No. 2900–0676'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 775–4194 or FAX to 202–495–5390.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OAL) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OAL's) functions, including whether the information will have practical utility; (2) the accuracy of (OAL's) estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs (VA) National Acquisition Center Customer Response Survey, VA Form 0863.

OMB Control Number: 2900–0676.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0863 will be used to collect customer's feedback and suggestions on delivered products and services administered by the National Acquisition Center (NAC). NAC will use the data to improve and/or enhance its program operations for both internal and external customers.

Affected Public: Federal Government.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8276 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection (Educational/Vocational Counseling Application) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public

comment in response to the notice. This notice solicits comments for information needed to determine an applicant's entitlement to counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0265'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Educational/Vocational Counseling Application, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–8832 to apply for counseling services. VA provides personal counseling as well as counseling in training and career opportunities. The information collected will be used to determine the claimant's eligibility for counseling.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,550 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,100.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8277 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Proposed Information Collection (Income, Net Worth, and Employment Statement) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to disability pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income, Net Worth, and Employment Statement.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 used to obtain current employment, dependency, and family income and net worth information to determine a claimant's entitlement to disability pension.

Affected Public: Individuals or Households.

Estimated Annual Burden: 104,440.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 104,440.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8279 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection (Application for Burial Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a deceased veteran's eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–530 to apply for burial benefits, including transportation for deceased veterans. VA will use the information collected to determine the veteran's eligibility for burial benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,000 hours.

Estimated Average Burden per Respondent: 22 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 300,000.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8280 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Proposed Information Collection (Request One-VA Identification Verification Card) Activity; Comment Request

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Operations, Security, and Preparedness (OSP), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to issue a Personal Identity Verification (PIV) identification card.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to John Hancock, Office of Personnel Security and Identity Management (07C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *john.hancock@va.gov.* Please refer to ''OMB Control No. 2900–0673'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: John Hancock at (202) 461–5489 or FAX (202) 495–5326.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSP invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSP's functions, including whether the information will have practical utility; (2) the accuracy of OSP's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for One-VA Identification Card.

OMB Control Number: 2900–0673.

Type of Review: Extension of a currently approved collection.

Abstract: VA PIV Enrollment System Portal is use to collect pertinent information from Federal employees, contractors, and affiliates prior to issuing a Department identification credential. VA will use the data collected to personalize, print, and issue a PIV card.

Affected Public: Federal government.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100,000.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8282 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Proposed Information Collection (Interest Rate Reduction Refinancing Loan Worksheet) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether lenders computed the loan amount on interest rate reduction refinancing loans properly.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0386'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26–8923, to request a guaranty on all interest rate reduction refinancing loan and provide a receipt as proof that the funding fee was paid or evidence that a claimant was exempt from such fee. VA uses the data collected to ensure lenders computed the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans correctly.

Affected Public: Business or other for profit.

Estimated Annual Burden: 23,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 140,000.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8281 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Proposed Information Collection (Appointment of Veterans Service Organization/or Individuals as Claimant's Representative) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether claimant appointed a veterans service organization or an individual to prosecute their VA claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0321'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22 and Appointment of Individual as Claimant's Representative, VA Form 21–22a.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 21–22 and 21–22a to appoint a veterans service organization or an individual to assist in the preparation, representation, and prosecution of claims for VA benefits and to authorize VA to disclose any or all records to the appointed representative.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–22—27,083 hours.

b. VA Form 21–22a—533 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents:

a. VA Form 21–22—325,000.

b. VA Form 251–22a—6,400.

Dated: April 3, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–8278 Filed 4–5–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Friday,
No. 67 April 6, 2012

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0406; FRL–9648–3]

Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving a revision to the North Dakota State Implementation Plan (SIP) addressing regional haze submitted by the Governor of North Dakota on March 3, 2010, along with SIP Supplement No. 1 submitted on July 27, 2010, and part of SIP Amendment No. 1 submitted on July 28, 2011. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). EPA is promulgating a Federal Implementation Plan (FIP) to address the gaps in the plan resulting from our partial disapproval of North Dakota's Regional Haze (RH) SIP.

In addition, EPA is disapproving a revision to the North Dakota SIP addressing the interstate transport of pollutants that the Governor submitted on April 6, 2009. We are disapproving it because it does not meet the Act's requirements concerning non-interference with programs to protect visibility in other states. To address this deficiency, we are promulgating a FIP.

DATES: This final rule is effective May 7, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0406. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6281, or *fallon.gail@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- The initials *ASOFA* mean or refer to advanced separated overfire air.
- The initials *AVS* mean or refer to Antelope Valley Station.
- The initials *BACT* mean or refer to Best Available Control Technology.
- The initials *BART* mean or refer to Best Available Retrofit Technology.
- The initials *CAM* mean or refer to compliance assurance monitoring.
- The initials *CAMx* mean or refer to Comprehensive Air Quality Model.
- The initials *CCS* mean or refer to Coal Creek Station.
- The initials *CEMS* mean or refer to continuous emission monitoring system.
- The initials *CMAQ* mean or refer to Community Multi-Scale Air Quality modeling system.
- The initials *CSAPR* mean or refer to Cross-State Air Pollution Rule.
- The initials *EGUs* mean or refer to Electric Generating Units.
- The words *we, us* or *our* or the initials EPA mean or refer to the United States Environmental Protection Agency.
- The initials *FIP* mean or refer to Federal Implementation Plan.
- The initials *FLMs* mean or refer to Federal Land Managers.
- The initials *GRE* mean or refer to Great River Energy.
- The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.
- The initials *IWAQM* mean or refer to Interagency Workgroup on Air Quality Modeling.
- The initials *LDSCR* mean or refer to low-dust SCR.
- The initials *LOS* mean or refer to Leland Olds Station.
- The words *Lostwood or Lostwood Wilderness Area* or initials *LWA* mean or refer to Lostwood National Wildlife Refuge Wilderness Area.
- The initials *LNB* mean or refer to low NO_X burners.
- The initials *LTS* mean or refer to Long-Term Strategy.
- The initials *MRYS* mean or refer to Milton R. Young Station.
- The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- The words *North Dakota* and *State* mean the State of North Dakota unless the context indicates otherwise.
- The initials NO_X mean or refer to nitrogen oxides.
- The initials *NPCA* mean or refer to National Parks Conservation Association.
- The initials *NPS* mean or refer to National Park Service.
- The initials *PM* mean or refer to particulate matter.
- The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers or course particulate matter.
- The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers or fine particulate matter.
- The initials *PRB* mean or refer to Powder River Basin.
- The initials *PSAT* mean or refer to Particle Source Apportionment Technology.
- The initials *PSD* mean or refer to Prevention of Signification Deterioration.
- The initials *RHR* mean or refer to the Regional Haze Rule.
- The initials *RH SIP* mean or refer to North Dakota's Regional Haze State Implementation Plan.
- The initials *RMC* mean or refer to the Regional Modeling Center at the University of California Riverside.
- The initials *RP* mean or refer to Reasonable Progress.
- The initials *RPG* mean or refer to Reasonable Progress Goal.
- The initials *SCR* mean or refer to selective catalytic reduction.
- The initials *SIP* mean or refer to State Implementation Plan.
- The initials *SNCR* mean or refer to selective non-catalytic reduction.
- The initials SO_2 mean or refer to sulfur dioxide.
- The initials *SOFA* mean or refer to separated overfire air.
- The initials *TRNP* mean or refer to Theodore Roosevelt National Park.

• The initials *TSD* mean or refer to Technical Support Document.
• The initials *URP* mean or refer to Uniform Rate of Progress.
• The initials *WEP* mean or refer to Weighted Emissions Potential.
• The initials *WRAP* mean or refer to the Western Regional Air Partnership.

Table of Contents

I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap. CAA section 110(c)(1).

This action involves two separate requirements under the CAA and EPA's regulations. One is the requirement that states have SIPs that address regional haze, the other is the requirement that states have SIPs that address the interstate transport of pollutants that may interfere with programs to protect visibility in other states.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

Few states submitted a regional haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states, including North Dakota, and the District of Columbia and the Virgin Islands, had failed to submit SIPs addressing the regional haze requirements. 74 FR 2392. Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two year period. CAA section 110(c)(1).

North Dakota initially submitted a SIP addressing regional haze on March 3, 2010. On July 27, 2010, North Dakota submitted a revision to that submittal, entitled ''SIP Supplement No. 1.'' On July 28, 2011, North Dakota submitted another revision, entitled ''SIP Amendment No. 1.''

B. Interstate Transport Requirements

Section 110(a)(1) of the CAA requires states to submit SIPs to address new or revised National Ambient Air Quality Standards (NAAQS) within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. On July 18, 1997, we promulgated the 1997 8-hour ozone NAAQS and the 1997 fine particulate ($PM_{2.5}$) NAAQS. 62 FR 38652. Section 110(a)(2) of the CAA lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to the interstate transport of certain emissions.

Section 110(a)(2)(D)(i) contains four distinct requirements or ''prongs'' related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

On April 25, 2005, we published a ''Finding of Failure to Submit SIPs for Interstate Transport for the 8-hour Ozone and $PM_{2.5}$ NAAQS.'' 70 FR 21147. This action included a finding that North Dakota and other states had failed to submit SIPs to address interstate transport of air pollution and started a 2-year clock for the promulgation of a FIP by us, unless a state made a submission to meet the requirements of section 110(a)(2)(D)(i), and we approved the submission, prior to that time. *Id.*

On April 6, 2009, we received a SIP revision from North Dakota to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. In prior actions, we approved this North Dakota SIP submittal for the first three prongs of section 110(a)(2)(D)(i). (75 FR 31290, June 3, 2010 and 75 FR 71023, November 22, 2010). This action addresses the fourth prong.

C. Lawsuits

In two separate lawsuits, one in U.S. District Court for the Northern District of California and one in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to timely take action with respect to the interstate transport requirements and the regional haze requirements of the CAA and our regulations. In particular, the lawsuits alleged that we

had failed to promulgate FIPs for these requirements within the two-year period allowed by CAA section 110(c) or, in the alternative, fully approve SIPs addressing these requirements.

As a result of these lawsuits, we entered into two separate consent decrees in these two jurisdictions. The consent decree in the Northern District of California, as modified on several occasions, required that we sign a notice of proposed rulemaking for prong four of the interstate transport requirements for North Dakota by September 1, 2011. As lodged with the court, but before it was entered, the proposed consent decree in the District of Colorado required that we sign a notice of proposed rulemaking for regional haze requirements for North Dakota by July 21, 2011. Because the latter consent decree was not entered by the court until September 27, 2011, and we signed our notice of proposed rulemaking on September 1, 2011, the July 21, 2011 deadline was mooted.

Both consent decrees, as modified, require that we sign a notice of final rulemaking addressing the regional haze requirements and prong four of the interstate transport requirements by March 2, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

D. Our Proposal

We signed our notice of proposed rulemaking on September 1, 2011, and it was published in the **Federal Register** on September 21, 2011 (76 FR 58570). In that notice, we provided a detailed description of the various regional haze and interstate transport requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.

In our proposal, we proposed to take the following actions:

1. Regional Haze

We proposed to disapprove the following parts of North Dakota's RH SIP:

a. North Dakota's nitrogen oxides (NO_X) best available retrofit technology (BART) determinations and emissions limits for Milton R. Young Station (MRYS) Units 1 and 2, Leland Olds Station (LOS) Unit 2, and Coal Creek Station (CCS) Units 1 and 2.

b. North Dakota's determination under the reasonable progress requirements found at section 40 CFR 51.308(d)(1) that no additional NO_X emissions controls were warranted at Antelope Valley Station (AVS) Units 1 and 2.

c. North Dakota's reasonable progress goals (RPGs).

d. Portions of North Dakota's long-term strategy (LTS) that relied on or reflected other aspects of the RH SIP that we were proposing to disapprove.

We proposed to approve the remaining aspects of North Dakota's RH SIP revision that was submitted on March 3, 2010 and SIP Supplement No. 1 that was submitted on July 27, 2010. We proposed to approve the following parts of SIP Amendment No. 1 that the State submitted on July 28, 2011:

a. Amendments to Section 10.6.1.2 pertaining to Coyote Station.

b. Amendments to Appendix A.4, the Permit to Construct for Coyote Station.

We proposed to not act on the remainder of the State's July 28, 2011 submittal.

We proposed to promulgate a FIP to address the deficiencies in the North Dakota RH SIP that we identified in our proposal. The proposed FIP included the following elements:

a. NO_X BART determinations and emission limits for MRYS Units 1 and 2 and Leland Olds Station Unit 2.

b. NO_X BART determination and emission limit for CCS Units 1 and 2.

c. A reasonable progress determination and NO_X emission limit for AVS Units 1 and 2.

d. A five-year deadline to meet the emission limits and monitoring, recordkeeping, and reporting requirements for the above seven units to ensure compliance.

e. RPGs consistent with the SIP limits proposed for approval and proposed FIP limits.

f. LTS elements that would reflect the other aspects of the proposed FIP.

We also proposed approval of a SIP revision in lieu of our regional haze FIP if the State submitted a revision in a timely way that matched the terms of our proposed FIP.

2. Interstate Transport, Visibility Prong

We proposed to disapprove the portion of North Dakota's April 6, 2009, SIP revision for interstate transport in which North Dakota intended to address the requirement of section 110(a)(2)(D)(i)(II) that emissions from North Dakota sources not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility.

Because of this proposed disapproval, we proposed a FIP to meet the visibility protection requirement of section 110(a)(2)(D)(i)(II). To meet this FIP duty, we proposed to find that North Dakota sources would be sufficiently controlled to eliminate interference with the visibility programs of other states by a combination of the measures that we were proposing to approve as meeting the regional haze SIP requirements combined with the additional measures that we were proposing to impose in a FIP to meet the remaining regional haze SIP requirements.

We noted that acting on both the section 110(a)(2)(D)(i)(II) requirement and the regional haze SIP requirement simultaneously would ensure the most efficient use of resources by the affected sources and EPA.

E. Public Participation

We requested comments on all aspects of our proposed action and provided a two-month comment period, with the comment period closing on November 21, 2011. We also provided a public hearing. Initially, we scheduled the hearing to last four hours on one day. 76 FR 58570. At the request of the Governor of North Dakota, we expanded the time for the public hearing to 14 hours over two days and changed the venue. 76 FR 60777 (September 30, 2011). The public hearing was held in Bismarck, North Dakota on October 13 and 14, 2011.

We received a significant number of comments on our proposed rule, both from commenters, particularly citizens and environmental groups, that supported our proposed action, and from commenters, primarily from state and city agencies, rural power cooperatives, and industrial facilities and groups, that were critical of our proposed action.

In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action, including any changes from our proposed action.

II. Final Action

A. Regional Haze

With this final action we are partially approving and partially disapproving North Dakota's RH SIP revision that was submitted on March 3, 2010, SIP Supplement No. 1 that was submitted on July 27, 2010, and part of SIP Amendment No. 1 that was submitted on July 28, 2011. Specifically we are disapproving:

- North Dakota's NO_X BART determinations and emissions limits for CCS Units 1 and 2.
- North Dakota's determination under the reasonable progress requirements found at 40 CFR 51.308(d)(1) that no additional NO_X emissions controls are warranted at AVS Units 1 and 2.
- North Dakota's RPGs.
- Portions of North Dakota's LTS that rely on or reflect other aspects of the RH SIP that we are disapproving.

We are approving the remaining aspects of North Dakota's RH SIP revision that was submitted on March 3, 2010 and SIP Supplement No. 1 that was submitted on July 27, 2010. We are approving the following parts of SIP Amendment No. 1 that the State submitted on July 28, 2011: (1) Amendments to Section 10.6.1.2 pertaining to Coyote Station, and (2) amendments to Appendix A.4, the Permit to Construct for Coyote Station. We are not taking action on the remainder of the July 28, 2011 submittal at this time.

We are finalizing a FIP to address the deficiencies in the North Dakota RH SIP that result from our partial disapproval of the SIP.

The final FIP includes the following elements:

- NO_X BART determination and emission limit for CCS Units 1 and 2 of 0.13 lb/MMBtu averaged across the two units on a 30-day rolling average, and a requirement that the owners/operators comply with this NO_X BART limit within five (5) years of the effective date of this final rule.
- A reasonable progress determination and NO_X emission limit for AVS Units 1 and 2 of 0.17 lb/MMBtu that applies singly to each of these units on a 30-day rolling average, and a requirement that the owner/operator meet the limit as expeditiously as practicable, but no later than July 31, 2018.
- Monitoring, record-keeping, and reporting requirements for the above four units to ensure compliance with these emission limitations.
- RPGs consistent with the SIP limits approved and the final FIP limits.
- LTS elements that reflect the other aspects of the finalized FIP.

B. Interstate Transport, Visibility Prong

We are disapproving a portion of a SIP revision that North Dakota submitted for the purpose of addressing the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. Specifically, we are disapproving the portion of the April 6, 2009 SIP in which North Dakota intended to address the requirement of section 110(a)(2)(D)(i)(II) that emissions from North Dakota sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. Because of this disapproval, we are promulgating a FIP to meet this requirement of section 110(a)(2)(D)(i)(II). To meet this FIP duty, we are finding that North Dakota sources will be sufficiently controlled to eliminate interference with the visibility programs of other states by a combination of the measures in the North Dakota SIP that we are simultaneously approving as meeting the regional haze SIP requirements combined with the additional measures that we are imposing in a FIP to meet the remaining regional haze SIP requirements. We note that North Dakota always has the discretion to revise its SIP and submit the revision to us. Should such a revision meet CAA requirements, we would replace our FIP with North Dakota's SIP revision. We encourage the State to revise its SIP.

III. Changes From Proposed Rule and Reasons for the Changes

A. NO_X BART for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2

As noted, we proposed to disapprove North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2 and to promulgate a FIP for NO_X BART for these units to fill the gap that would have resulted from our disapproval. After considering a recent judicial decision, we have decided to approve North Dakota's NO_X BART determination for MRYS 1 and 2 and LOS 2 and to not promulgate a FIP for NO_X BART for these units. We more fully describe the reasons for this change below.

On July 27, 2006, the U.S. District Court for the District of North Dakota entered a consent decree between EPA, the State, and Minnkota Power Cooperative (''Minnkota''). The consent decree resulted from an enforcement action that EPA and the State brought against Minnkota for alleged violations of Prevention of Significant Deterioration (PSD) permitting requirements at MRYS 1 and 2. The consent decree called for North Dakota to make a best available control technology (BACT) determination for NO_X for MRYS 1 and 2 but also provided a dispute resolution procedure in the event of disagreement regarding the BACT determination.

In November 2010, North Dakota determined BACT for NO_X to be limits of 0.36 lb/MMBtu for MRYS 1 and 0.35 lb/MMBtu for MRYS 2 based on the use of selective non-catalytic reduction (SNCR) technology, with separate limits during startup. In reaching this decision, North Dakota eliminated selective catalytic reduction (SCR), a higher performing control technology, based on a finding that SCR was not technically feasible to control emissions from North Dakota lignite coal. In particular, North Dakota noted that no SCR has ever been employed on an electric generating unit (EGU) burning North Dakota lignite, that North Dakota lignite has unique properties that have the potential to quickly degrade the SCR catalyst, and that no catalyst vendor supplied with the specifications for the coal at MRYS 1 and 2 would provide a guarantee of catalyst life without first conducting slipstream or pilot tests at MRYS.

EPA disagreed with North Dakota's findings and the selection of selective non-catalytic reduction (SNCR) as BACT and initiated the dispute resolution process under the consent decree. Under the consent decree, the court was tasked with upholding North Dakota's BACT determination unless the disputing party was able to demonstrate that North Dakota's decision was unreasonable. We have included a copy of the consent decree and the court's order in the docket for this action.

On December 21, 2011, following briefing by the parties, and consideration of North Dakota's record for its BACT determination, the court determined that EPA had not demonstrated that North Dakota's findings were unreasonable. The court decided that North Dakota, based on the administrative record for its BACT determination, had a reasonable basis for concluding that SCR is not technically feasible for treating North Dakota lignite at MRYS. The court upheld North Dakota's determination that SNCR is BACT.

There are two critical principles expressed in our BART guidelines that are relevant here. First, as part of a BART analysis, technically infeasible control options are eliminated from further review. For BART, EPA's criteria for determining whether a control option is technically infeasible are substantially the same as the criteria used for determining technical infeasibility in the BACT context. 70 FR 39165; EPA's ''New Source Review Workshop Manual,'' pages B.17–B.22. Second, the BART guidelines indicate that states generally may rely on a BACT determination for a source for purposes of determining BART for that source, unless new technologies have become available or best control levels for recent retrofits have become more stringent. 70 FR 39164. As a general rule, the selection of a recent BACT level as BART is the equivalent of selecting the most stringent level of control, and consideration of the five statutory BART factors becomes unnecessary.

Over our vigorous challenge of the information and analysis relied upon by North Dakota, the U.S. District Court upheld North Dakota's recent BACT determination based on the same

technical feasibility criteria that apply in the BART context. In light of the court's decision and the views we have expressed in our BART guidelines on the relationship of BACT to BART, we have concluded that it would be inappropriate to proceed with our proposed disapproval of SNCR as BART and our proposed FIP to impose SCR at MRYS 1 and 2 and LOS 2. While LOS 2 was not the subject of the BACT determination, the same reasoning that applies to MRYS 1 and 2 also applies to LOS 2. It is the same type of boiler burning North Dakota lignite coal, and North Dakota's views regarding technical infeasibility that the U.S. District Court upheld in the MRYS BACT case apply to it as well. Thus, with this action we are approving North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2, and no FIP for these units is necessary. The applicable limits are 0.36 lb/MMBtu for MRYS 1 and 0.35 lb/MMBtu for MRYS 2 and 0.35 lb/MMBtu for LOS 2.

We note, however, that the State has indicated a willingness to pursue the conduct of a pilot study at MRYS and/or LOS to analyze the expected replacement rate of SCR catalyst exposed to flue gas from the combustion of North Dakota lignite at these cyclone units in a low-dust or tail-end configuration. It is our expectation that the results of such a study could be used to inform further evaluation of SCR as a potential control technology when the State evaluates reasonable progress in the next planning period for regional haze. This position is supported by the State's December 20, 2011 letter from North Dakota Department of Health (NDDH), L. David Glatt, to EPA, Janet McCabe.

B. NO_X BART for Coal Creek Station (CCS) Units 1 and 2

We proposed a NO_X BART FIP limit for CCS 1 and 2 of 0.12 lb/MMBtu that would apply to each unit individually on 30-day rolling average basis. We based this limit on our proposed finding that SNCR plus separated overfire air (SOFA) plus low NO_X burners (LNB) was the best available retrofit technology. While we continue to find that SNCR plus SOFA plus LNB is the best available retrofit technology, we are changing the emission limit to 0.13 lb/MMBtu averaged over both units on a 30-day rolling average basis. Evidence submitted by commenters and our own additional research in evaluating comments has led us to conclude that this represents a more reasonable limit to apply on a 30-day rolling average basis.

This limit represents a control efficiency of 48% based on the average annual baseline emission rate of 0.22 lb/MMBtu (2003–2004) provided in the State's BART determination. This value is slightly lower than the 49% control efficiency we assumed in our proposal, a value that was based on the State's analysis. Beginning in 2010, CCS 2 voluntarily started employing LNC3, the more stringent level of combustion controls that the State evaluated in its BART determination. Annual average Clean Air Markets data for this unit reflects a NO_X emission rate of 0.153 lb/MMBtu. We estimate that SNCR would achieve an additional 25% reduction, equivalent to an emission rate of 0.115 lb/MMBtu. This compares to a value of 0.108 lb/MMBtu that the State originally estimated.

Great River Energy (GRE), the owner of CCS, asserted in comments that SNCR will only achieve a 20% reduction beyond LNC3. We find that 25% is a conservative and reasonable estimate. We considered several sources of information in arriving at this value. First, the Control Cost Manual states that in typical field applications, SNCR provides a 30% to 50% NO_X reduction. The manual provides a scatter plot with NO_X reduction efficiency plotted as a function of boiler size in MMBtu/hr.[1] The plot supports GRE's assertion that control efficiency could be lower than 50%, and could approach 30%, for larger boilers such as those at CCS. Second, Fuel Tech (one of the most recognized SNCR technology suppliers) estimates a range of 25% to 50% NO_X reduction with application of SNCR.[2] Lastly, ICAC has published information that supports a control efficiency of 20 to 30% for SNCR above LNB/combustion modifications.[3] Given this range of control efficiencies, we have settled on a control efficiency—25%—that is lower than the lowest value given by the Control Cost Manual, at the low end of the range estimated by Fuel Tech, and in the middle of the range estimated by ICAC.

To arrive at a final BART emission limit, we adjusted the projected annual average of 0.115 lb/MMBtu upward by 10% and then rounded to the nearest hundredth to arrive at 0.13 lb/MMBtu. In our experience, a 5 to 15% upward adjustment is appropriate when converting an annual average emission rate to a limit that will apply on a 30-day rolling average to account for the fact that shorter averaging periods result in higher variability in emissions due to load variation, startup, shutdown, and other factors.

We decided to allow the averaging across Units 1 and 2 in response to comments we received. The BART Guidelines state, ''You should consider allowing sources to ''average'' emissions across any set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant being controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute the BART-eligible source.'' 40 CFR part 51, appendix Y, section V. This principle applies here.

C. Other Resultant Changes

Because we are now approving North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2, the basis for our proposed disapproval of North Dakota's RPGs is slightly changed from our proposal. Disapproval is still warranted because North Dakota's RPGs do not represent our final NO_X BART FIP limits at CCS 1 and 2 or our final NO_X reasonable progress FIP limits at AVS 1 and 2 (or the Heskett or Coyote controls that North Dakota included in the SIP). As part of our FIP, we are finalizing RPGs that are consistent with the controls we are imposing at CCS 1 and 2 and AVS 1 and 2, and the Heskett and Coyote controls that North Dakota included in the SIP. For further details regarding our rationale, please refer to our proposal and to our response to comments.

Similarly, because we are now approving North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2, the basis for our proposed partial disapproval of North Dakota's LTS is slightly changed from our proposal. Partial disapproval is still warranted because we are disapproving North Dakota's NO_X BART determination for CCS 1 and 2 and NO_X reasonable progress determination for AVS 1 and 2, and the LTS does not reflect our final NO_X BART FIP limits at CCS 1 and 2 or our final NO_X reasonable progress FIP limits at AVS 1 and 2, or corresponding compliance provisions. Except for these missing elements, the LTS satisfies the requirements of 40 CFR 51.308(d)(3), so we are approving the remainder of the LTS. Our FIP fills the gap left by our partial disapproval of the LTS by specifying NO_X emission limits for CCS 1 and 2 and AVS 1 and 2, compliance schedules, and monitoring, recordkeeping, and reporting

[1] U.S. EPA, EPA Air Pollution Control Cost Manual, EPA/452/B–02–001, 6th Ed., January 2002, Section 4.2, Chapter 1, p. 1–3.

[2] *http://www.ftek.com/en-US/products/apc/noxout/.*

[3] Institute of Clean Air Companies, White Paper Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, February 2008, p. 9.

requirements. For further details regarding our rationale, please refer to our proposal and our response to comments.

IV. Basis for Our Final Action

We have fully considered all significant comments on our proposal, and, except as noted in section III, above, have concluded that no other changes from our proposal are warranted. Our action is based on an evaluation of North Dakota's SIP submittals and our FIP against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B, and against the interstate transport requirements concerning visibility at CAA section 110(a)(2)(D)(i)(II). All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on North Dakota's SIP submittals is based on CAA section 110(k). Our authority to promulgate our partial FIP is based on CAA section 110(c).

A. Regional Haze

We are approving most of North Dakota's RH SIP provisions because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed partial approval of the RH SIP pertained to North Dakota's BART and reasonable progress determinations.

With respect to the BART determinations that we proposed to approve, we understand that there is room for disagreement about certain aspects of the State's analyses. Furthermore, we may have reached different conclusions had we been performing the determinations in the first instance. However, the comments have not convinced us that the State, conducting specific case-by-case analyses for the relevant units, acted unreasonably or that we should be disapproving the State's BART determinations that we proposed to approve.

With respect to North Dakota's reasonable progress determinations that we proposed to approve, we continue to disagree with the manner in which North Dakota evaluated visibility improvement when it evaluated single source controls and have disregarded this evaluation in our consideration of the reasonableness of North Dakota's reasonable progress control determinations. We also disagree with some of North Dakota's legal conclusions about the necessity of reasonable progress controls for certain sources—specifically, for Coyote Station for NO_X and for Heskett Station 2 for sulfur dioxide (SO_2). However, in these instances, North Dakota nonetheless included emission limits in the SIP that reflect reasonable levels of control for reasonable progress for this initial planning period. Here again, we understand that there is room for disagreement about the State's analyses and appropriate limits. And, again, we may have reached different conclusions had we been performing the determinations. However, the comments have not convinced us that the State, conducting specific case-by-case analyses for the relevant units, made unreasonable determinations for this initial planning period or that we should be disapproving the State's reasonable progress determinations that we proposed to approve.

As noted, we are disapproving North Dakota's NO_X BART determination for CCS 1 and 2 and its NO_X reasonable progress determination for AVS 1 and 2 and promulgating a partial FIP to establish the required limits and corresponding compliance provisions. For CCS 1 and 2, the State relied on values for costs of compliance supplied by the owner that were admittedly erroneous. As explained in detail in our response to comments, the comments we received have not convinced us that our disapproval of the State's NO_X BART determination for CCS 1 and 2 is unreasonable, or that our NO_X BART FIP determination and limits (as modified in this final action) are unreasonable. In particular, we conclude that GRE's latest cost estimates and cost effectiveness values for SNCR, as reflected in its November 2011 comments, are not based on reasonable assumptions and overestimate the costs of compliance. Instead, our consideration of the five statutory BART factors leads us to conclude that SNCR plus SOFA plus LNB is BART, with a limit of 0.13 lb/MMBtu on a 30-day rolling average basis. Also, we continue to find that the costs of SCR are not reasonable given the projected visibility improvement; the comments we received on this issue have not convinced us otherwise.

For AVS 1 and 2, consistent with our proposal, we are disapproving the State's determination under our reasonable progress requirements (40 CFR 51.308(d)(1)) that no additional NO_X emissions controls are warranted, and we are finalizing a FIP with a reasonable progress determination and a NO_X emission limit for AVS 1 and 2 of 0.17 lb/MMBtu on a 30-day rolling average basis. Nothing in the comments has convinced us that the State's determination was reasonable or that our proposed FIP was unreasonable. As we noted in our proposal, the costs for installation and operation of combustions controls at AVS 1 and 2 are very reasonable ($586 and $661 per ton) and the predicted NO_X reductions are substantial—3,500 tons per unit per year. Appropriate single-source modeling also indicates that the visibility benefits will be substantial—0.754 deciviews. Based on these facts, and given that North Dakota's RPGs will not meet the uniform rate of progress (URP), it was unreasonable for North Dakota to reject LNB at AVS 1 and 2. We have determined that the State's rejection of this level of control, and the corresponding RPGs, are not justifiable based on a reasonable consideration of the applicable regulatory factors—costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of the source. LNB is a modest, widely-used, cost-efficient means to achieve significant NO_X reductions, and the resultant visibility benefits will be comparable to or greater than the benefits achieved through selected controls at several BART units in North Dakota. We have also rejected comments that call for more stringent controls at AVS 1 and 2 in this planning period. While such controls may be appropriate in a later planning period, we cannot say that the State's rejection of such controls in this planning period was unreasonable. For further details regarding our rationale, please refer to our proposal and our response to comments.

Consistent with our proposal, we are approving the remaining elements of North Dakota's RH SIP because such elements meet the relevant requirements of our regional haze regulations.

B. Interstate Transport, Visibility Prong

The basis for this part of our action remains unchanged from our proposal. Nothing in the comments has convinced us that a change from our proposal is warranted. North Dakota's April 6, 2009 transport submittal contained only a cursory reference to CAA section 110(a)(2)(D)(i)(II)'s requirement for a SIP revision that contains adequate provisions ''prohibiting any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' Because of the impacts on visibility from the interstate transport of pollutants, we

interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the RPGs required to be set to protect Class I areas in other states, or a demonstration that emissions from North Dakota sources and activities will not have the prohibited impacts. North Dakota's April 6, 2009 submittal contains neither. Thus, we are disapproving it. To the extent that the State intended to meet the requirement of section 110(a)(2)(D)(i)(II) with the RH SIP, the RH SIP submission itself is not fully approvable.

As required by section 110(c), we are promulgating a FIP to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) concerning visibility protection. As explained in section II, the FIP relies on the combination of the North Dakota RH SIP provisions that we are approving and the additions to the regional haze program for North Dakota that we are promulgating in our FIP for NO_X BART for CCS 1 and 2 and NO_X reasonable progress for AVS 1 and 2. Because this combination exceeds the stringency of BART and reasonable progress limits that were already factored into the Western Regional Air Partnership (WRAP) modeling for RPGs, this combination meets the visibility prong of CAA section 110(a)(2)(D)(i)(II). This combination of regional haze controls will ensure that emissions from sources in North Dakota do not interfere with other states' visibility programs as required by section 110(a)(2)(D)(i)(II) of the CAA.

For further details regarding our rationale, please refer to our proposal and our response to comments.

V. Issues Raised by Commenters and EPA's Responses

A. NO_X BART for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2

As noted in section III of this action, in a major change from our proposal, we are now approving North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2, and we are not proceeding with a FIP for NO_X BART for these units. We explain the basis for this change in section III.

We received numerous comments that were specific to the NO_X BART determinations for MRYS 1 and 2 and LOS 2. These related to a variety of issues—modeling and visibility improvement, costs of compliance, technical feasibility, appropriate emission limits, and other issues. The grounds for our decision to approve North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2 render irrelevant further consideration of these issues. Essentially, we are approving the State's determination of BART based on a federal court's ruling on our challenge to the State's BACT determination for MRYS. In establishing BACT, the State established an emission limit based on what it considered the maximum degree of reduction of NO_X, taking into account various factors similar to those in a BART determination. Thus, while we disagree with the vast majority of the comments that disputed our technical and legal analyses concerning NO_X BART for MRYS 1 and 2 and LOS 2, we generally are not summarizing or responding to those comments to the extent they are specific to the assessment of NO_X BART for MRYS 1 and 2 and LOS 2.[4] However, we are responding to comments that may be relevant to other aspects of this action.

B. Comments on Legal Issues

1. EPA's Authority

Comment: Multiple commenters stated that CAA Section 169A and the Regional Haze Rule (RHR) give the states (North Dakota in this instance) the lead in developing their regional haze SIPs. Some commenters went further in stating that North Dakota is given almost complete discretion in creating its RH SIP. These commenters argued that, because North Dakota is given such discretion, EPA lacks the statutory authority to disapprove the State's RH SIP. Specifically, some commenters pointed to the flexibility the State is granted in developing its BART determination, RPGs, modeling protocol and cost analysis. The State of North Dakota, for instance, argued that each factor in the five-factor analysis used to make its BART determination was appropriately weighed based on the State's own discretion. The State therefore argues that the EPA has no basis on which to disapprove the five-factor analysis.

Response: Congress crafted the CAA to provide for states to take the lead in developing implementation plans, but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. EPA's review of SIPs is not limited to a ministerial type of automatic approval of a state's decisions. EPA must consider not only whether the State considered the appropriate factors but acted reasonably in doing so. In undertaking such a review, EPA does not ''usurp'' the state's authority but ensures that such authority is reasonably exercised. EPA has the authority to issue a FIP either when EPA has made a finding that the State has failed to timely submit a SIP or where EPA has found a SIP deficient. Here, EPA has authority on both grounds, and we have chosen to approve as much of the North Dakota SIP as possible and to adopt a FIP only to fill the remaining gap. Our action today is consistent with the statute. In finalizing our proposed determinations, we are approving the State's determinations in identifying BART eligible sources and largely approving the State's BART determinations for seven different emission units subject to BART. Also, we are largely approving the State's reasonable progress determinations. We are, however, disapproving the State's NO_X BART determinations for two units—CCS 1 and 2—and its NO_X reasonable progress determinations for two units—AVS 1 and 2.

The State's NO_X BART determinations for CCS 1 and 2 are not approvable because North Dakota did not properly follow the requirements of section 51.308(e)(1)(ii)(A). Specifically, North Dakota did not reasonably ''take into consideration the costs of compliance,'' when it relied on cost estimates that greatly overestimated the costs of controls. We have determined that the faults in the cost estimates were significant enough that they resulted in BART determinations for NO_X for CCS 1 and 2 that were both unreasoned and unjustified. Accordingly, these determinations are not approvable.

We are disapproving the State's determination that no NO_X controls are needed at AVS 1 and 2 to achieve reasonable progress because the State's determination is not reasonable under the relevant statutory and regulatory requirements.

In the absence of approvable NO_X BART determinations in the SIP for CCS 1 and 2 and in the absence of an approvable reasonable progress determination concerning NO_X controls at AVS 1 and 2, we are obliged to promulgate a FIP to satisfy the CAA requirements. Likewise, in the absence of an approvable SIP that addresses the requirement that emissions from North Dakota sources do not interfere with measures required in the SIP of any other state to protect visibility, we are obliged to promulgate a FIP to address the defect. This authority and

[4] Some commenters criticized the credibility and credentials of one of our sub-contractors. Because of their focused nature, we have included a response to some of those comments in our docket for this action, even though the substance of the issues is no longer relevant to our decision.

responsibility exists under CAA section 110(c)(1).

We also are required by the terms of two separate consent decrees, one in the U.S. District Court for the District of Colorado and one in the U.S. District Court for the Northern District of California to ensure that North Dakota's CAA requirements for regional haze and for 110(a)(2)(D)(i)(II), respectively, are finalized by March 2, 2012. Because we have found that the State's SIP submissions do not adequately satisfy either requirement in full and because we have previously found that North Dakota failed to timely submit these SIP submissions, we have not only the authority, but a duty to promulgate a FIP that meets those requirements.

Our action in large part approves the RH SIP submitted by North Dakota. The disapproval of the NO_X BART and reasonable progress determinations and imposition of the FIP is not intended to encroach on state authority. This action is only intended to ensure that CAA requirements are satisfied using our authority under the CAA.

Comment: The NDDH commented that states are free to deviate from the BART guidelines in the preparation of their BART analyses, except for power plants with a capacity exceeding 750 megawatts (MW).

Response: We agree that the BART guidelines are only mandatory under the regional haze regulations for ''fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts.'' 40 CFR 51.308(e)(1)(ii)(B). However, the fact that a state may deviate from the guidelines for other BART sources does not mean that the state has unfettered discretion to act unreasonably or inconsistently with the CAA and our regulations. Where the BART guidelines are not mandatory, a state must still meet the requirements of the CAA and our regulations. In other words, the State must still adopt and apply the best available retrofit technology, considering the statutory factors.

Our regulations define best available retrofit technology to mean ''an emission limitation based on the degree of reduction achievable through the application of the *best system* of continuous emission reduction for each pollutant which is emitted by an existing stationary facility.'' 40 CFR 51.301 (emphasis added). We do not consider that this definition can simply be dismissed under the mantle of state discretion.

In addition, North Dakota's own regulations, which have been submitted for our approval and which we are approving with this action, provide as follows:

> ''33–15–25–03 Guidelines for best available retrofit technology determinations under the Regional Haze Rule.
>
> Title 40, Code of Federal Regulations, part 51, appendix y, as published in the **Federal Register** on July 6, 2005, is incorporated by reference into this chapter. The owner or operator of a fossil-fuel-fired steam electric plant with a generating capacity greater than seven hundred fifty megawatts of electricity shall comply with the requirements of appendix y. All other facility owners or operators *shall use* appendix y as guidance for preparing their best available control retrofit technology determinations.''

(Emphasis added.) Appendix Y contains EPA's BART guidelines. Our approval of this regulation makes it federally enforceable.

North Dakota appears to disavow the dictates of its own regulation:

> ''EGUs with a capacity of less than 750 MW * * * are free to deviate from the BART Guidelines in the preparation of their BART analyses.
>
> MRYS * * * *may use* the Guidelines as guidance only.''

State of North Dakota's November 21, 2011 comments, p. 22 (emphasis added). But, the regulation says that EGUs less than 750 MW ''shall use'' EPA's BART guidelines as guidance, not that they ''may use'' them as guidance or that they are ''free to deviate'' from them.

Given that North Dakota's own regulation, which we are making federally enforceable with this action, requires the use of the BART guidelines as guidance for BART analyses, we think it reasonable to conclude that any deviation from the guidelines must be based on a reasonable justification.

Regardless, the BART guidelines are mandatory for CCS, which is the one source for which we are disapproving the State's BART determination.

Comment: North Dakota meets the presumptive BART limits for NO_X at CCS 1 and 2, based on the 2005 BART Guidelines. EPA's rationale for disapproving the BART determinations at CCS 1 and 2 is therefore flawed and contrary to the BART Guidelines. EPA appears to be undertaking a national effort to change its BART Rule without going through notice and comment rulemaking to amend or repeal the rule. EPA is doing so by ''applying BART determinations made for sources in one state as a new presumptive limit for all states.'' Commenter cites 76 FR 58623 of the proposed rule, where EPA justifies a cost/ton ''that states other than North Dakota have considered reasonable for BART,'' but is higher than the presumptive BART limits.

Response: We disagree with the commenter. First, for each source subject to BART, the RHR, at 40 CFR 51.308(e)(1)(ii)(A), requires that states identify the level of control representing BART after considering the factors set out in CAA section 169A(g), as follows: States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of visibility improvement that may be expected from available control technology. 70 FR 39158. In other words, the presumptive limits do not obviate the need to identify the best system of continuous emission control technology on a case-by-case basis considering the five factors. A state may not simply ''stop'' its evaluation of potential control levels at the presumptive level of control if more stringent control technologies or limits are technically feasible. We do not read the BART guidelines in appendix Y to contradict the requirement in our regulations to determine ''the degree of reduction achievable through the application of the best system of continuous emission reduction'' ''on a case-by-case basis,'' considering the five factors. 40 CFR 51.301 (definition of Best Available Retrofit Technology); 40 CFR 51.308(e). Also, our interpretation is supported by the following language in our BART guidelines:

> While these levels may represent current control capabilities, we expect that scrubber technology will continue to improve and control costs continue to decline. You should be sure to consider the level of control that is currently best achievable at the time that you are conducting your BART analysis.

70 FR 39171. The presumptive limits are meaningful as indicating a level of control that EPA generally considered achievable and cost effective at the time it adopted the BART guidelines in 2005, but not a value that a state could adopt without conducting a five factor analysis considering more stringent, technically feasible levels of control.

The commenter focuses on narrow passages of the BART guidelines to support its view that the presumptive limits represent the most stringent BART controls that EPA can require for regional haze. However, these passages must be reconciled with the language of the RHR cited above, as well as other passages of the BART guidelines and associated preamble. A central concept expressed in the guidelines is that a

state is not required to consider the five factors if it has selected the most stringent level of control; otherwise, a state must fully consider the five factors in determining BART. 40 CFR part 51, appendix Y, section IV.D.1, step 1.9. Undoubtedly, as the commenter notes, the presumptive limits for NO_X represent cost effective controls, but it is well-understood that limits based on combustion controls do not represent the most stringent level of control for NO_X. Thus, a state which selects combustion controls and the associated presumptive limit for NO_X as BART may only do so after rejecting more stringent control technologies based on full consideration of the five factors. Our interpretation reasonably reconciles the various provisions of our regulations. We clearly communicated our views on this subject to North Dakota while it was developing its RH SIP, and, following our interpretation, North Dakota conducted an analysis of control technologies that would achieve a more stringent limit than combustion controls.

While North Dakota conducted a five-factor analysis to determine BART at CCS, its determination was based on erroneous values for the costs associated with potential loss of fly ash sales due to ammonia contamination, something the source acknowledged in June of 2011. 76 FR 58603. A BART determination based on substantially erroneous cost values does not meet the requirements of the CAA or our regulations to determine the best system of continuous emission control technology considering cost and the other statutory factors. Because we cannot approve the State's BART determination, we are authorized, and in this case obligated, to promulgate a FIP.

In promulgating a FIP for CCS, we arrived at an emission limit that is more stringent than the presumptive limit based on consideration of the five factors. Contrary to the commenter's suggestion, EPA's BART guidelines do not establish a presumptive cost effectiveness level that is a ''safe harbor'' or ''shield'' for state BART determinations, or that EPA, when promulgating a FIP, may not exceed in determining BART. Once a FIP is required, we stand in the state's shoes. In considering the cost factor, it is reasonable for us to consider other sources of information to inform our decision, including the cost values other states have considered reasonable. This is not EPA establishing a new presumptive limit or national rule; it is EPA, acting in the state's shoes, conducting a reasonable source-specific consideration of cost and the other regulatory factors. In addition, although not required, we considered cost effectiveness values that the State of North Dakota had considered to be reasonable in reaching its BART determinations. See 76 FR 58623 (''It is also within the range of values that North Dakota considered reasonable in its NO_X BART determinations * * *'')

Comment: EPA has failed to articulate, or apply, a SIP review standard that preserves state authority over BART determinations. EPA can't rely on vague references to the overarching purpose of the regional haze program to define what's reasonable. The CAA only requires consideration of the five statutory factors and emission limits that yield a reduction in visibility impairment. EPA has contradicted prior statements in various contexts, such as reports to Congress. EPA has provided no objective measure to gauge EPA's assessment. EPA's vague standards result in arbitrary and capricious decision making. EPA must articulate the standard by which it evaluates and disapproves a SIP and must support its decision with a plausible explanation.

Response: Our proposal clearly laid out the bases for our proposed disapproval of the State's BART and reasonable progress determinations, and we have relied on the standards contained in our regional haze regulations and the authority that Congress granted us to review and determine whether SIPs comply with the minimum statutory and regulatory requirements. To the extent a cost analysis relies on values that are inaccurate, a state has not considered cost in a reasoned or reasonable fashion. To the extent a state has considered visibility improvement from potential emissions controls in a way that substantially understates the improvement or does so in a way that is not consistent with the CAA, the state has not considered visibility improvement in a reasoned or reasonable fashion. In these circumstances, it is reasonable for EPA to disapprove the relevant aspects of the SIP. In determining SIP adequacy, we inevitably exercise our judgment and expertise regarding technical issues, and it is entirely appropriate that we do so. Courts have recognized this necessity and deferred to our exercise of discretion when reviewing SIPs. See, e.g., *Connecticut Fund for the Env't., Inc.* v. *EPA,* 696 F.2d 169 (2nd Cir. 1982); *Michigan Dep't. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000); *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (9th Cir. Jan. 19, 2012).

We disagree with the argument that we must approve a BART determination where the SIP reflects consideration of the five factors and the BART selection will result in some improvement in visibility. We think Congress expected more when it required the application of ''best available retrofit technology.''

While the commenter places great emphasis on EPA's prior statements in reports to Congress, these statements have no regulatory effect. Also, these statements are not as supportive of commenter's position as commenter suggests. For example, ''some flexibility'' does not suggest unfettered flexibility; a report's suggestion that a cooperative approach would make sense does not suggest that EPA will or must approve unilateral decision-making by a state no matter what.

Contrary to the commenter's assertion, we have not destroyed the State's primacy. In fact, we have approved the vast majority of the State's determinations. We are only rejecting the State's unreasonable analyses and decisions. We are authorized to do so.

Comment: The grounds invoked by EPA to disapprove the RH SIP are legislative in nature and cannot be imposed without advance notice and comment rulemaking. EPA's proposed action on North Dakota's SIP articulates a number of grounds not contained in CAA section 169A that must be met for a SIP to be ''approvable.'' These additional grounds have never been defined or promulgated with notice and comment rulemaking. For example, EPA's proposed action articulates a two pronged test for BART SIP approval: first, ''a state must meet the requirements of the CAA and our regulations for selection of BART''; and second, ''the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.'' 76 FR 58577. The commenter objects to the second prong, *i.e.,* that ''the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.'' According to the commenter, this is a new ''reasonableness'' standard that is neither defined nor separately set forth in the Act. The commenter asserts that EPA is proposing to measure a BART determination not just against the statutory criteria but also against EPA's own subjective view whether the result reached is reasonable enough to meet the ''overarching goal'' of the Act. EPA's new subjective reasonable enough requirement imposes a new legislative standard that either goes beyond or, for

the first time, purports to define ''the requirements of the Act.'' This empowers EPA to disapprove a state BART determination and replace it with its own on reasonableness grounds that have never been defined or first vetted through public notice and comment.

Response: First, even assuming that EPA's proposed action on the North Dakota RH SIP articulated new grounds for evaluating a regional haze SIP, the proposed action provides the public with the opportunity to comment. As evidenced by the commenter's submission, the commenter had the opportunity to comment on EPA's approach to evaluating the North Dakota RH SIP and to identify any concerns associated with the statement at issue from our proposal and other aspects of our action.

Second, the CAA requires states to submit SIPs that contain such measures as may be necessary to make reasonable progress toward achieving natural visibility conditions, including BART. The CAA accordingly requires the states to submit a regional haze SIP that includes BART as one necessary measure for achieving natural visibility conditions. In view of the statutory language, it is hardly a novel idea that the reasonableness of the state's BART analysis and determination would be evaluated in light of the purpose of the regional haze program. In addition, our regional haze regulations, at 40 CFR 51.308(d)(ii), provide that when a state has established a RPG that provides for a slower rate of improvement in visibility than the URP (as has North Dakota), the state must demonstrate, based on the reasonable progress factors—*i.e.,* costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of affected sources—that the rate of progress to attain natural visibility conditions by 2064 is not reasonable and that the progress goal adopted by the state is reasonable. 40 CFR 51.308(d)(iii) provides that, ''in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate'' the state's demonstrations under section 51.308(d)(ii). It is clear that our regulations and the CAA require that we review the reasonableness of the State's BART determinations in light of the goal of achieving natural visibility conditions. This approach is also inherent in our role as the administrative agency empowered to review and approve SIPs. Thus, we are not establishing a new reasonableness standard, as the commenter asserts.

Comment: EPA established a new adequacy criterion when it found that North Dakota's cost analysis did not provide a reasonable basis to make a NO_X BART determination for LOS 2. It was illegal for EPA to establish a new adequacy criterion without rulemaking.

Response: While we have decided to approve the State's NO_X BART determination for LOS 2, this comment may be relevant to other aspects of our final action.

Our prior response largely addresses this assertion. However, in addition, we think the illogic of the commenter's claim is revealed when the potential consequences of the commenter's views are examined. The necessary product of the commenter's view is that a state could rely on irrational values for any of the five factors, and EPA would be powerless to disapprove the SIP. We reject that view. We are not establishing new criteria for approval of a regional haze SIP. We are applying the criteria and requirements already specified in the CAA and our regulations. Cost is one of the factors a state must consider in determining BART. If North Dakota has relied on greatly inflated cost estimates in its consideration of the cost factor, it has not considered cost in any meaningful sense of the word.

It is also our opinion that the commenter, in its effort to put our action in a specific legal box—*i.e.,* ''illegal administrative action''—consistently misrepresents the nature of our action. This *is* a SIP review action, and we believe that EPA is not only authorized, but required to exercise independent technical judgment in evaluating the adequacy of the State's RH SIP, including its BART determinations, just as EPA must exercise such judgment in evaluating other SIPs. In evaluating other SIPs, EPA is constantly exercising judgment about SIP adequacy, not just to meet and maintain the NAAQS, but also to meet other requirements that do not have a numeric value. In this case, Congress did not establish NAAQS by which to measure visibility improvement; instead, it established a reasonable progress standard and required that EPA assure that such progress be achieved. Here, contrary to the commenter's assertion, we are exercising judgment within the parameters laid out in the CAA and our regulations. Our interpretation of our regulations and of the CAA, and our technical judgments, are entitled to deference. See, e.g., *Michigan Dep't. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000); *Connecticut Fund for the Env't., Inc.* v. *EPA,* 696 F.2d 169 (2nd Cir. 1982); *Voyageurs Nat'l Park Ass'n* v. *Norton,* 381 F.3d 759 (8th Cir. 2004); *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (9th Cir. Jan. 19, 2012).

Comment: EPA has no statutory authority to disapprove North Dakota's BART determination for LOS 2. CAA section 169A(b)(2) leaves that determination expressly and exclusively in the hands of the State. EPA's SIP approval authority under CAA section 110 only permits EPA to confirm whether the State considered the statutory factors; it does not authorize EPA to pass judgment on how the State considers them. The commenter cites the *American Corn Growers* and *UARG* decisions as support for its comments. Nor, according to the commenter, does section 110 permit EPA to propose its own emission controls. By doing so, EPA's FIP ''run[s] roughshod over the procedural prerogatives that the Act has reserved to the States'' (citing *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028, 1036 (7th Cir. 1984)).

Response: While we have decided to approve the State's NO_X BART determination for LOS 2, this comment may be relevant to other aspects of our final action. The commenter reads too much into the language of 169A. We do not agree that the language, ''as determined by the State,'' grants the State unlimited discretion or ''sole control'' in making a BART determination, any more than the accompanying language, ''or the Administrator in the case of a plan promulgated under section 7410(c) of this title,'' grants EPA unlimited discretion in making a BART determination in a FIP.

Instead, while States are assigned the primary statutory and regulatory authority to determine BART, and have significant freedom to determine the weight and significance of the statutory factors, they have an overriding obligation to come to a reasoned determination. They may not act unreasonably or in an arbitrary and capricious fashion, and Congress has assigned EPA, as the reviewing agency, the role of determining whether a State's BART determination or reasonable progress determination is reasonable.

The commenter's citations to legislative history are unconvincing. Among other things, they are incomplete. The commenter ignores the intent behind the 1977 legislation:

> ''The Administrator must promulgate regulations which assure attainment of the national goal * * * Specifically, the regulations must require that States which contain mandatory class I areas, and States

whose emissions cause or contribute to visibility problems in such areas, revise their implementation plan to include two elements. The first element of the plan revision is that the State plan must provide for installation of ''best available retrofit technology'' for existing major stationary sources which cause or contribute to visibility impairment in such areas.''

95 Cong. Conf. Report H. Rept. 564, at 154.

Commenters suggest that visibility issues are only of state and local concern and that is why Congress left states with sole control. This is inconsistent with the very first sentence of the statute: ''Congress hereby declares as a *national goal* the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas * * *'' CAA section 169A, (emphasis added). It is also inconsistent with the legislative history, which states:

''There are certain national lands, including national parks, national monuments, national recreation areas, national primitive areas, and national wilderness areas, in which protection of clean air quality is obviously a critical national concern * * * Indeed, the millions of Americans who travel thousands of miles each year to visit Yosemite or the Grand Canyon or the North Cascades will find little enjoyment if, for example, upon reaching the Grand Canyon it is difficult if not impossible to see across the great chasm. If that were to come to pass—and several of our great national parks, including the Grand Canyon, are threatened today by such a fate—the very values which these unique areas were established to protect would be irreparably diminished, perhaps destroyed.''

95 Cong. House Report 294 at 137.

Thus, we do not agree that Congress assigned us a merely ministerial role; it is not evident how such a limited role would assure attainment of the national goal or the actual imposition of the best available retrofit technology where a state's BART determination is unreasonable, arbitrary and capricious, or not in accordance with the law.

We also disagree that our proposal is inconsistent with the *American Corn Growers* and *UARG* decisions. These cases dealt with EPA's authority to issue generic regulations regarding BART determinations. They did not address EPA's authority in reviewing a SIP.

Contrary to the commenter's assertion, the *Bethlehem Steel* case is inapplicable here. We are promulgating BART and reasonable progress limits under the authority of CAA section 110(c), not through our action on North Dakota's SIP. We have authority to promulgate our FIP under 110(c) on two separate grounds: first, based on our January 2009 finding of failure to submit the RH SIP; and second, based on our partial disapproval of the RH SIP.

Comment: Commenter stated that EPA is incorrect to assert that NDDH did not adequately consider all five statutory factors for LOS 2. Commenter stated that EPA concludes, in its own BART evaluation, that SNCR + ASOFA (NDDH's BART selection) is cost effective and provides substantial visibility benefits. When a state has taken into consideration the five statutory factors and selected a technology that reduces visibility impairments, it has complied with the statute and EPA must approve the SIP. Since EPA's own FIP analysis proves North Dakota's choice complies with the statute, EPA has no basis to disapprove it.

Response: While we have decided to approve the State's NO_X BART determination for LOS 2, this comment may be relevant to other aspects of our final action. The commenter cites no authority in the CAA or our regulations for its assertion that a BART determination that considers the five statutory factors is adequate as long as it provides some reduction in visibility impairment. We know of no such criterion. Instead, our regulations define BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Given that the BART limit must reflect the ''application of the best system of continuous emission reduction,'' we interpret the Act to require a reasonable consideration of the five factors, one that is not arbitrary and capricious.

Comment: EPA's effort to impose BART determinations by federal rulemaking impermissibly deprives source owners of the substantive procedural rights they are otherwise afforded under State law. The commenter notes that the State used a permit process to establish BART limits, and that a similar source-by-source adjudication of such limits must be provided by EPA. The commenter also asserts that EPA must allow for examination and cross-examination of witnesses, and that, otherwise, the process is not consistent with due process.

Response: While the State has chosen to use the permit process to establish BART limits for individual sources, there is nothing in the CAA or our regulations that requires states or EPA to use permits or a source-by-source adjudicatory proceeding to establish BART limits. Both the CAA and our regulations require that BART limits be contained in a SIP. In the absence of an approvable SIP, CAA section 110(c) requires us to issue a FIP. We have issued a partial FIP pursuant to CAA section 307. CAA section 307 provides that its provisions apply in lieu of the Administrative Procedure Act (APA). The procedures provided by CAA section 307 are adequate to ensure due process to source owners. We have provided a substantial opportunity for comment (a two-month long comment period) and an extensive public hearing that lasted 14 hours over two days. The commenter submitted over 140 pages of comments with several attachments, and other commenters submitted comments of similar length. It is not unusual for FIPs to include source-specific limits and requirements. An opportunity for examination and cross-examination of witnesses is not required by the CAA, nor is it required to ensure due process. Individuals and entities affected by EPA's action have had ample opportunity to challenge EPA's conclusions.

Comment: Sole control over BART determinations for EGUs under 750 MW is left to the states. Congressional intent to exclude federal involvement in BART determinations for smaller generating stations is apparent from the plain text of the statute and is binding on EPA. EPA may not disapprove a state BART determination for an EGU the size of Leland Olds.

Response: EPA disagrees with the suggestion that Congress intended to totally remove EPA from review of BART determinations for EGUs less than 750 MW. The statute merely says that for EGUs greater than 750 MW, BART must be determined in accordance with guidelines promulgated by EPA. That does not obviate the need for the State to select BART, after considering the five statutory factors. And, it does not remove EPA's review role over SIP submittals.

Comment: North Dakota has the authority under the RHR to review the new updated cost analyses provided by URS and Golder Associates on behalf of GRE.

Response: Our action does not prevent North Dakota from reviewing GRE's updated cost analyses, or from submitting a revised SIP. States always have the freedom to submit SIP revisions to EPA. We need not speculate in this action whether such a revision would be approvable. However, such a SIP revision is not the subject of this action, and we are neither obligated nor authorized to wait for such a revision before we finalize our proposed action. To the contrary, we have already exceeded the statutory deadline for promulgating a FIP or approving a SIP for regional haze, and, under two separate consent decrees, we must finalize this action by March 2, 2012.

GRE acknowledged in a June 2011 email that it had made errors in its original cost estimates for NO_X BART for CCS. The State relied on those erroneous cost figures in its NO_X BART analysis and determination for CCS in its RH SIP that it submitted on March 3, 2010. This is the main RH SIP submittal that we are acting on today.

Because of the magnitude of these acknowledged errors, it is appropriate to disapprove the BART determination for CCS 1 and 2 that is contained in the March 3, 2010 submittal. We explain in response to a prior comment why selection of the presumptive limits without a valid case-specific analysis supporting such limits as BART is not sufficient to meet the requirements of the regional haze regulations. Based on our disapproval of the SIP, and on separate grounds related to our January 2009 finding of failure to submit, we are authorized and obligated to promulgate a FIP for NO_X BART for CCS 1 and 2. CAA section 110(c). We have considered GRE's revised cost analyses in the context of our proposed FIP and address those analyses in a subsequent response.

Comment: Commenter stated that EPA's action is in violation of the 10th amendment to the Constitution.

Response: Our action does not compel North Dakota to enforce federal law and does not intrude on authority reserved to the states. Thus, our action is consistent with the 10th amendment to the Constitution.

Comment: Commenter stated that EPA's action is in violation of Article 4 of the Constitution.

Response: The comment does not specify which aspect of Article 4 we are alleged to have violated. However, we conclude that our action does not violate any aspect of Article 4 of the Constitution.

Comment: Commenter stated that Federal Land Managers (FLMs) are using their Air Quality Related Values Workgroup (FLAG) report, a guidance document, in highly inappropriate ways.

Response: This comment appears to relate to how the FLMs respond to proposed PSD permits rather than EPA's proposed actions here. Accordingly, we are not responding to the substance of this comment. Contrary to the commenter's assertion, we do not consider our own actions to be inflexible. We note that we are approving the great majority of the State's BART and reasonable progress determinations.

2. Interstate Transport Consent Decree

Comment: Commenter states that EPA wrongly uses the Interstate Transport consent decree to justify action by the September 1, 2011 deadline. Commenter claims that EPA separately acknowledged that the Interstate Transport consent decree never addressed the regional haze plan. North Dakota has sought leave of the court that issued the consent decree to intervene in the case. North Dakota is also seeking a declaration from the Court that EPA is exceeding its authority under that consent decree to use it for justification of the regional haze proposal.

Response: The United States District Court for the Northern District of California rejected the commenter's arguments in an order dated December 27, 2011. We agree that the transport consent decree does not address the regional haze plan. However, as the court in California recognized, we made an appropriate administrative decision to address the CAA's transport requirements and regional haze requirements in the same action. Given that we faced a September 1, 2011 deadline for our proposed transport action under the transport consent decree, and faced an uncertain deadline for proposed action and a January 26, 2011 deadline for final action under the then-lodged regional haze consent decree, we acted in a prudent and reasonable fashion to sign our notice of proposed rulemaking by the September 1, 2011 deadline in the transport consent decree.

Comment: North Dakota's Interstate Transport SIP, specifically the ''visibility'' element of CAA Section 110(A)(2)(D)(i)(II), must be approved. North Dakota commented that EPA had no reason not to act on the visibility portion of the State's interstate transport SIP submission according to EPA's 2006 guidance. Another commenter stated that the EPA ''admits'' in the Proposed North Dakota RH SIP/FIP that the State met the sole obligation of Section 110(A)(2)(D)(i)(II), and that the EPA's reasons for disapproval therefore lack basis.

Response: We fully explained the basis for our proposed disapproval of North Dakota's interstate transport SIP in our proposal. See 76 FR 58641–58642. We have fully considered the comments, but nothing in the comments has caused us to change our views. As we explained in our proposal, our 2006 guidance was premised on a certain set of assumptions—in particular, that states would submit their regional haze SIPs by the regulatory deadline and that the regional haze SIPs would be the appropriate means for states to establish that their SIPs contained adequate provisions to prevent interference with the visibility programs required in other states. It turned out we were mistaken in our assumptions, and we explained in our proposal that subsequent events have rendered our 2006 guidance inappropriate in this specific action. Thus, we appropriately and reasonably evaluated the State's interstate transport SIP against the statutory requirements and found it deficient. The State disagrees with the way in which we characterized the State's transport SIP in our proposal at 76 FR 58574, but we were clear in our discussion later in our notice that ''North Dakota did not explicitly state in its April 6, 2009, submittal that it intended that its Regional Haze SIP be used to satisfy the visibility prong * * *'' 76 FR 58641.

Basin Electric misrepresents our proposed action. While we indicated that the State had not explicitly indicated that it was submitting the RH SIP to meet the interstate transport requirements, which left us in an uncertain position, that was not the only basis for our conclusion that the RH SIP did not meet the transport requirements. Instead, we stated, ''Most importantly, however, EPA must review the April 6, 2009 submission in light of the current facts and circumstances, and the RH SIP revision that the State ultimately submitted does not fully meet the substantive requirements of the regional haze program * * * To the extent that the State intended to meet the requirement of section 110(a)(2)(D)(i)(II) with the RH SIP, the RH SIP submission itself is not fully approvable.'' 76 FR 58642.

The State and Basin Electric assert that we should approve the RH SIP as satisfying the transport requirements even though we are disapproving the SIP as meeting regional haze requirements. We disagree. Under the suggested approach, EPA would simultaneously codify in the Code of Federal Regulations disparate and conflicting requirements—the SIP limits

and associated requirements (or in the case of AVS, the lack thereof) for certain EGUs and the FIP limits and associated requirements for those same EGUs. This could lead to confusion regarding the requirements applicable to the industrial sources affected, including confusion in enforcement actions. Accordingly, we have decided to finalize our proposed disapproval of North Dakota's interstate transport SIP.

Comment: The NDDH commented that EPA has not provided any credible evidence that the additional emission reductions from the FIP will produce any discernible visibility improvement in out-of-state Class I areas and has not provided any credible evidence that these additional emission reductions are necessary to prevent North Dakota sources from interfering with another state's ability to protect visibility.

Response: In our proposal, we did not claim that our FIP to address the requirements of CAA section 110(a)(2)(D)(i)(II) would result in visibility improvement in out-of-state areas. We did not have the time or resources to re-do the WRAP modeling that states in the region had relied on in assessing the impacts of emissions reductions and in setting their RPGs. Instead, we noted that the emission limits in our proposed FIP to address certain deficiencies in the State's BART and reasonable progress measures in its RH SIP would exceed the emissions reductions for BART and reasonable progress for these sources that had been factored into the WRAP modeling for RPGs. As a result, we concluded that the limits in the FIP, in combination with the measures in the SIP that we had proposed to approve, would satisfy the interstate transport requirements for visibility. We continue to find that this is a reasonable conclusion. Although there may be other acceptable approaches to satisfying the requirements of CAA section 110(a)(2)(D)(i)(II) that would require additional visibility modeling, the approach that we have adopted does not require that we assess through modeling the visibility improvement that will result from our FIP to assure that North Dakota's emissions do not interfere with measures required in the plans of other states to protect visibility.

3. Other General Legal Comments

Comment: Some commenters stated that EPA cannot promulgate a FIP until it has taken final action on the related SIP.

Response: We have the authority to promulgate a FIP concurrently with a disapproval action. As has been noted in past FIP promulgation actions, if EPA ''finds that a State has failed to make a required submission * * * or * * * disapproves a [SIP] in whole or in part,'' CAA Section 110(c)(1) establishes a two-year period within which we must promulgate a FIP, and provides no further constraints on timing. See, e.g., 76 FR 25178, at 25202. North Dakota failed to submit its RH SIP to us by December 2007, as required by Congress. Two years later, North Dakota had still not submitted its RH SIP. When we made a finding in 2009 that North Dakota had failed to submit its RH SIP, (see 74 FR 2392), that created an obligation for us to promulgate a FIP by January 2011. We are promulgating the FIP concurrently with our disapproval action because of the applicable statutory deadlines requiring us at this time to promulgate regional haze BART determinations and reasonable progress (RP) determinations to the extent North Dakota's BART and RP determinations are not approvable.

We also note that North Dakota made this same argument to the U.S. District Court for the District of Colorado—in a motion opposing entry of a consent decree containing deadlines for EPA to promulgate a FIP for regional haze for North Dakota and in comments on the proposed consent decree. The court rejected North Dakota's argument. First, the court noted that we had proposed action on North Dakota's SIP in our September 1, 2011 proposal and we were, therefore, not proposing to take final action on the regional haze FIP before making a determination on North Dakota's SIP revision. Second, the court indicated that we would be authorized to promulgate the regional haze FIP even without taking final action on North Dakota's SIP. As we had argued, the court found that the duty to promulgate a FIP (triggered by our 2009 finding of failure to submit an RH SIP) remains ''*unless* the State corrects the deficiency, *and* the Administrator approves the plan or plan revision, *before* the Administrator promulgates such [FIP].'' Order Entering Consent Decree, *WildEarth Guardians* v. *Jackson,* Civil Action No. 11–cv–00001–CMA–MEH, USDC Colorado, p. 17, citing CAA section 110(c) (emphasis and brackets added by the court).

Comment: Commenter stated that EPA must review the ''blanket five year compliance date'' to install and operate BART to ensure that it is as expeditious as practicable, as required by the CAA.

Response: We have reviewed the compliance dates for meeting BART limits that are contained in the portions of the SIP we are approving and in the FIP we are promulgating. These dates are reasonable given the magnitude of the retrofits being undertaken. We note that the State permits that we are approving as part of this action provide for compliance as expeditiously as practicable, but in no event later than five years.

C. Comments on Modeling

Comment: Several commenters questioned aspects of the single-source CALPUFF modeling that North Dakota included in the SIP and which EPA relied upon in our evaluation of visibility impacts. Among other things, commenters questioned (1) Whether CALPUFF overestimates nitrate formation, (2) whether newer versions of CALPUFF would give more accurate results, (3) the method for establishing natural visibility background, (4) how to establish ammonia background concentrations, and (5) the method for interpreting model results as they relate to visibility improvement. The commenters submitted revised single-source CALPUFF modeling results to address what they believed to be deficiencies in the single-source CALPUFF modeling that North Dakota included in the SIP.

Response: While each of these comments is addressed separately in detailed responses below, a general response is warranted. We note that many of these comments were submitted by Minnkota and Basin Electric and were directed specifically to EPA's proposal regarding SCR at MRYS 1 and 2 and LOS 2. As we have explained, such comments are not relevant to our final action. Nonetheless, we are responding to most of the comments in the event that they could be interpreted as having broader application to the assessment of visibility improvement from potential control options.

The second point we note is that the source owners are essentially questioning modeling that they conducted and submitted to the State as part of their BART evaluations, and that the State specifically called for and included in the SIP. The State established procedures for single-source BART modeling used to support its SIP in the ''Protocol for BART-Related Visibility Impairment Modeling Analyses in North Dakota'' (the BART modeling protocol). North Dakota RH SIP, Appendix A.1. North Dakota intended for the protocol to apply to ''visibility modeling for both identification of sources 'subject to BART' (*i.e.,* BART screening), and for determining the degree of visibility improvement related to the selection of BART controls.'' North Dakota RH SIP, Appendix A.1, p. 1. In fact, North

Dakota specifically stated: ''[A]ll BART-related single-source modeling for sources in North Dakota must follow the protocol outlined here. Because of this requirement, the NDDH will not expect companies which operate BART-eligible sources to provide individual protocols for their BART-related modeling.'' *Id.,* p. 3. North Dakota's protocol conforms to the BART Guidelines.[5] It also follows recommendations for modeling long range transport contained in 40 CFR part 51, appendix W (''The Guideline on Air Quality Models'') and EPA's Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts. Furthermore, as discussed in Section 3 of the SIP, *Plan Development and Consultation,* the protocol was developed in consultation with EPA and FLM meteorologists. Adherence to the protocol ensures that a consistent comparison of visibility improvement can be made for potential control technologies across different individual units and different pollutants.

As the State's single-source BART modeling followed established guidance and was developed in consultation with FLMs and EPA, we find that it provides a reasonable basis for making control technology determinations. We do not agree with the sources' attempt to deviate from the established protocol for assessing visibility impacts. This is because it would lead to a less consistent and rational assessment of potential control options. Nonetheless, we have considered the revised single-source modeling and the comments submitted by the commenters in making our final action. We conclude that nothing contained in their modeling analysis undermines the single-source modeling that North Dakota included in the SIP.

Comment: Two commenters stated that the receptor-specific approach to identifying the 98th percentile result in CALPUFF is more technically correct than the default day-specific approach. The commenters also supplied revised CALPUFF modeling based on the receptor-specific approach. These modeling results suggest that controls would achieve less visibility improvement than indicated by North Dakota's single-source BART modeling.

[5] There is one aspect of the protocol that does not conform to the BART guidelines—North Dakota's inclusion of the 90th percentile modeling results in addition to the 98th percentile. The use of the 90th percentile modeling results is not consistent with the CAA. 70 FR 39121. We provide more detail about the deficiency in the use of the 90th percentile value in subsequent responses.

Response: We do not agree that the receptor-specific approach is more technically correct; it is not part of the standard CALPUFF model and merely serves to decrease the conservatism of the model predictions through the creation of 98th percentile values that are specific to specific receptor locations within a Class I area. The standard CALPUFF approach considers the daily impacts within a Class I area at all receptor points; *i.e.,* the model predicts the highest daily value for each day of the year from all receptors within a Class I area. The 98th percentile reflects the eighth highest of these daily values.

In its BART modeling protocol, North Dakota stated that ''the context of the 98th percentile 24-hour delta-deciview prediction is with respect to days of the year, and is not receptor specific.'' RH SIP, Appendix A.1, Section 4.0, p. 50. In addition, in establishing the 98th percentile as a reasonable contribution threshold in the BART Guidelines, EPA intended that the day-specific, or ''day-by-day,'' approach be used. 70 FR 39121. This was the approach EPA considered appropriate to account for the assumptions and uncertainties in CALPUFF; the receptor-specific approach goes beyond what EPA considers appropriate to address these assumptions and uncertainties and would undermine the goal of achieving natural visibility conditions. Therefore, we do not consider the revised CALPUFF modeling results based on the flawed receptor-specific approach that were submitted by the commenters to be useful in assessing visibility impacts..

Comment: Several of the commenters argue that it is inappropriate to evaluate visibility impacts in comparison to natural background visibility conditions. Instead, the commenters propose to evaluate visibility impacts in comparison to current, degraded visibility conditions. The commenters further argue that EPA's use of natural conditions is inconsistent with section 169A of the CAA and that EPA should amend its BART Guidelines to use current, degraded visibility conditions.

Response: We disagree. EPA's approach is consistent with Congress's intent in passing section 169A, and the proposal to use degraded visibility conditions is inconsistent with section 169A. Visibility impacts must always be evaluated relative to some reference visibility condition, and a given reduction in ambient $PM_{2.5}$ will result in smaller relative improvement in visibility when compared to polluted conditions versus clean conditions. Because current degraded visibility conditions are considerably worse than natural background visibility, comparison of a BART source's impact relative to current degraded visibility conditions would result in a smaller relative benefit than would a comparison relative to natural background visibility. EPA previously considered and responded to the same comment in 40 CFR part 51, appendix Y, promulgated at 70 FR 39104, July 6, 2005. After receiving this comment on the BART Guidelines, EPA considered the approach of assessing a BART-eligible source's impacts on visibility by using current or near-term future conditions, and EPA determined that BART visibility impacts should be evaluated in comparison to natural background visibility. In the final rulemaking EPA wrote (70 FR 39124):

> ''Using existing conditions as the baseline for single source visibility impact determinations would create the following paradox: the dirtier the existing air, the less likely it would be that any control is required. This is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less. Therefore the more polluted the Class I area would become, the less control would seem to be needed from an individual source. We agree that this kind of calculation would essentially raise the ''cause or contribute'' applicability threshold to a level that would never allow enough emission control to significantly improve visibility. Such a reading would render the visibility provisions meaningless, as EPA and the States would be prevented from assuring ''reasonable progress'' and fulfilling the statutorily-defined goals of the visibility program. Conversely, measuring improvement against clean conditions would ensure reasonable progress toward those clean conditions.''

See, also, Memorandum from Gail Tonnesen, Regional Modeler, to North Dakota Regional Haze File, dated September 1, 2011, regarding ''Modeling Single Source Visibility Impacts.'' This memorandum is included in Appendix B of the Technical Support Document (TSD) for this action.

Comment: Two commenters performed new CALPUFF simulations using EPA's current regulatory version 5.881 and submitted these modeling results to EPA during the comment period. The commenters found lower visibility impacts using CALPUFF version 5.8 than did the State with an earlier CALPUFF version 5.711a.

Response: For these new model results, the commenters did not submit a modeling protocol for EPA review and did not provide a complete copy of the CALPUFF input and output files. As a result, EPA was not able to fully review the data sets used in this modeling.

Moreover, while EPA did approve the use of the Rapid Update Cycle meteorology for modeling the Heskett facility, EPA has not approved this alternate modeling protocol for other BART sources in North Dakota and has not reviewed or approved other modifications to the modeling approach that the commenters used in developing new CALPUFF results.

From the information that the commenters provided, EPA determined that the differences in the new CALPUFF version 5.8 modeling results are due in part to a change in the natural background visibility that was used in the modeling analysis. The State's modeling protocol called for use of the 20% best natural visibility days in its BART analysis while the commenters' new CALPUFF version 5.8 analysis used the annual average natural visibility days. If the commenters had adopted the same approach as North Dakota and compared CALPUFF version 5.8 visibility impacts to the 20% best natural visibility days, the results of the new analysis would have been more similar to the original modeling performed by North Dakota.

We do not find that the commenters' new modeling demonstrates that single-source modeling performed according to North Dakota's BART modeling protocol should be disregarded. That modeling was conducted using the latest version of CALPUFF that was available at the time, and we are approving the great majority of North Dakota's BART determinations that relied on results from that modeling. In our FIP, in which we are merely filling gaps in the SIP, we are not required to conduct new modeling using CALPUFF version 5.8 or disregard the results of the modeling conducted using CALPUFF version 5.711a. In fact, we find the better course is to rely on modeling based on the same version of the model that the State employed to ensure we are using a consistent comparison. See, *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (9th Cir. Jan. 19, 2012).

Comment: The commenters argue that CALPUFF overstates visibility impact due to the complexity of the chemistry affecting visibility impairment and that EPA acknowledges that ''the simplified chemistry in the [CALPUFF] model tends to magnify the actual visibility effects of [a] source.'' 70 FR 39121. The commenters further state that when EPA adopted the BART Guidelines, EPA concurred with ''the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations.'' Id. at 39123. The commenters also assert that several published papers or presentations show that CALPUFF over predicts nitrate by a factor of 2 to 4 in the winter.

Response: For the reasons already stated, EPA's reliance on the CALPUFF modeling results that the State included in the SIP is reasonable. In addition, EPA has acknowledged that the simplified chemistry used in the CALPUFF model creates uncertainty in the accuracy of the model for predicting visibility impacts for pollutants such as NO_X that are converted from the gas phase to aerosol through complex photochemical reactions. However, it is uncertain whether the simplified chemistry will always overpredict visibility impacts. For example, Anderson *et al.* (2010) [6] found that the CALPUFF model frequently predicted lower nitrate concentrations compared to the Comprehensive Air Quality Model (CAMx) photochemical grid model, which has a much more rigorous treatment of photochemical reactions. EPA recognized the uncertainty in the CALPUFF modeling results, and EPA made the decision in the final BART guidelines that the model should be used to estimate the 98th percentile visibility impairment rather than the highest daily impact value as proposed. 70 FR 39121. We made the decision to consider the less conservative 98th percentile (*i.e.,* the eighth highest 24-hour deciview impact in a year rather than the highest) primarily because the chemistry modules in the CALPUFF model are simplified and might in some cases predict a maximum 24-hour impact that is an ''outlier.'' Id. If recent updates to CALPUFF cause the model to predict lower visibility impacts, the use of the updated model might also require EPA to reconsider the choice of the less conservative 98th percentile for evaluating visibility impacts. In any event, our reliance on CALPUFF modeling is reasonable for the reasons discussed above.

Comment: Several commenters suggested that the State has unlimited discretion to consider visibility or cost or other factors in any way it wishes, even in ways that are inaccurate or inconsistent with the purpose of the CAA.

Response: We disagree. We have already largely addressed the assertions in this comment in our responses to comments on our legal authority. Furthermore, as a hypothetical example, EPA would not defer to a state determination that the remaining useful life of a source is one year if relevant evidence indicates the remaining useful life is 20 years. Limits on state discretion are inherent in the CAA and our regulations; otherwise, states would be free to reach decisions that are arbitrary and capricious or inconsistent with the purpose behind the CAA and EPA's regulations. As we have stated, North Dakota's cumulative modeling approach thwarts the goal stated by Congress in CAA section 169A and underlying the RHR.

Comment: One commenter claimed that pictorial examples demonstrate that the visibility benefits which EPA claims can be achieved with NO_X control technologies are not perceptible. The commenter compares archived pictures copied from the National Park Service (NPS) Web site, along with the monitored haze index, for days having varying levels of visibility impairment. For example, the commenter compares two pictures from different days for which the haze index changes by 1.26 deciviews and concludes that ''no perceptible difference can be seen * * *''

Response: We do not expect that a 1.0 deciview change in visibility, which is considered a ''small but noticeable change in haziness under most circumstances'' (64 FR 35725), could be easily perceived in a small picture on the printed page. Moreover, North Dakota did not provide visibility improvement relative to a pre-control baseline as recommended by the BART guideline (70 FR 39170), so many of the estimates of visibility improvement contained in the SIP are misleadingly low. Regardless, the BART Guidelines establish that predicted visibility improvement below perceptibility thresholds does not provide a basis to automatically eliminate a control option: ''Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area. Thus, we disagree that the degree of improvement should be contingent upon perceptibility. Failing to consider less-than-perceptible contributions to visibility impairment would ignore the CAA's intent to have BART requirements apply to sources that contribute to, as well as cause, such impairment.'' 70 FR 39129. The

[6] Anderson, B., K. Baker, R. Morris, C. Emery, A. Hawkins, E. Snyder ''Proof-of-Concept Evaluation of Use of Photochemical Grid Model Source Apportionment Techniques for Prevention of Significant Deterioration of Air Quality Analysis Requirements'' Community Modeling and Analysis System (CMAS) 2010 Annual Conference, October 11–15, 2010, Research Triangle Park, NC. *http://www.cmascenter.org/conference/2010/agenda.cfm.*

importance of visibility impacts below the thresholds of perceptibility cannot be ignored given that regional haze (as contrasted with reasonably attributable visibility impairment) is a problem that is produced by a multitude of sources and activities which are located across a broad geographic area.

Comment: Commenter states that it takes a larger change in pollutant emissions to cause a perceptible visibility change when the change is measured against current degraded visibility conditions rather than ''natural'' visibility conditions. Visibility benefits estimated relative to natural background will ''tend to be five to seven times larger'' than the benefits estimated relative to current degraded visibility. Therefore, using the natural background conditions overstates the visibility improvement that would be achieved by controls at the time of installation.

Response: As noted in our responses to other similar comments, it is precisely this effect that leads us to conclude that the only approach consistent with the statutory and regulatory goals when considering visibility improvement associated with potential single-source control options is to use natural background values in the model. The goal is reasonable progress, not stasis.

Comment: One commenter argues that the natural background specified by EPA significantly exaggerates how clean natural conditions actually are. The commenter provides a report on natural visibility background which argues that EPA's estimate of natural conditions significantly understates the extent of natural particulate emissions, including dust and wildfires, which are uncontrollable.

Response: EPA recognized that variability in natural sources of visibility impairment cause variability in natural haze levels as described in its ''Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule.'' [7] The preamble to the BART guidelines (70 FR 39124) describes an approach used to measure progress toward natural visibility in Mandatory Class I Areas that includes a URP toward natural conditions for the 20 percent worst days and no degradation of visibility on the 20 percent best days. The use of the 20 percent worst natural conditions days in the calculation of the URP takes into consideration visibility impairment from wild fires, windblown dust and other natural sources of haze. The ''Guidance for Estimating Natural Visibility'' also discusses the use of the 20 percent best and worst estimates of natural visibility, provides for revisions to these estimates as better data becomes available,[8] and discusses possible approaches for refining natural conditions estimates (pages 3–1 to 3–4).

For the evaluation of visibility impacts for BART sources, EPA recommended the use of the natural visibility baseline for the 20% best days for comparison to the ''cause or contribute'' applicability thresholds. This estimated baseline is reasonably conservative and consistent with the goal of attaining natural visibility conditions. While EPA recognizes that there are natural sources of haze, the use of the 20% worst natural visibility days is inappropriate for the ''cause or contribute'' applicability thresholds. For example, if BART source visibility impacts were evaluated in comparison to days with very poor natural visibility resulting from nearby wild fires or dust storms, the BART source impacts would be significantly reduced relative to these poor natural visibility conditions and would not be protective of natural visibility on the best 20% days.

The commenter and the cited report on natural visibility by Robert Paine appear to suggest that EPA requires the use of the best 20% visibility days for all aspects of visibility analysis. This does not accurately characterize EPA's recommended use of the 20% worst natural visibility days for URP calculations and the 20% best natural visibility days for the ''cause or contribute'' applicability thresholds. For example, natural visibility conditions at the Badlands National Park for the best 20%, annual average, and worst 20% natural visibility days are 2.9, 5.0, and 8.1 deciviews, respectively.[9] By contrast, current visibility conditions at the Badlands National Park for the best 20%, annual average, and worst 20% days are 6.9, 11.6 and 17.1 deciviews, respectively. The URP calculation uses the worst 20% natural visibility value of 8.1 deciviews, and this value adequately represents the impacts of natural sources of visibility impairment. Finally, as part of the settlement of a case brought by the Utility Air Regulatory Group challenging the BART Guidelines,[10] EPA agreed to issue guidance clarifying that states may use either the 20% best or the annual average in estimating natural visibility in the evaluation of a BART source's impacts. This guidance makes clear that states have the flexibility to use either approach in estimating natural background conditions. The State was not required to use the annual average and did not. Similarly, in issuing a FIP, we are not required to use the annual average either.

The commenter cited modeling studies that purportedly show that the model-predicted natural haze levels are substantially larger than the natural haze levels used by EPA. In fact, the results of those studies compare well with EPA's natural background levels. The modeling study by Tonnesen *et al.*[11] predicted annual average natural $PM_{2.5}$ concentrations in North Dakota in the range of 1.9 to 2.5 ug/m^3, while the Koo *et al.* study [12] predicted annual average natural $PM_{2.5}$ concentrations in the range of 2.5 to 3.1 ug/m^3 in North Dakota. These model estimates are consistent with EPA's estimated 2.6 ug/m^3 annual average $PM_{2.5}$ concentration at Class I Areas in western North Dakota.

Comment: One commenter felt that EPA's decision appears to be driven by its desired outcome—more emission reductions—and not by any legal basis for disapproving the North Dakota SIP.

Response: Our decision is driven by our interpretations of the CAA and our

[7] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, U.S. Environmental Protection Agency, September 2003. *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf,* page 1–1: ''Natural visibility conditions represent the long-term degree of visibility that is estimated to exist in a given mandatory Federal Class I area in the absence of human-caused impairment. It is recognized that natural visibility conditions are not constant, but rather they vary with changing natural processes (e.g., windblown dust, fire, volcanic activity, biogenic emissions). Specific natural events can lead to high short-term concentrations of particulate matter and its precursors. However, for the purpose of this guidance and implementation of the regional haze program, natural visibility conditions represents a long-term average condition analogous to the 5-year average best- and worst-day conditions that are tracked under the regional haze program.''

[8] Guidance for Estimating Natural Visibility Conditions * * *: ''The preamble further stated that 'with each subsequent SIP revision, the estimates of natural conditions for each mandatory Federal Class I area may be reviewed and revised as appropriate as the technical basis for estimates of natural conditions improve.' ''

[9] Natural Haze Levels II Committee Report.

[10] Settlement Agreement in *Utility Air Regulatory Group* v. *EPA,* Case No. 06–1056 in the United States Court of Appeals for the District of Columbia Circuit, April 19, 2006.

[11] Tonnesen, G., Omary, M., Wang, Z., Jung, C.J., Morris, R., Mansell, G., Jia, Y., Wang, B., Adelman, Z., 2006. Report for the Western Regional Air Partnership Regional Modeling Center. University of California Riverside, Riverside, California, November. *http://pah.cert.ucr.edu/aqm/308/reports/final/2006/WRAP-RMC_2006_report_FINAL.pdf.*

[12] Koo, B.; Chien, C.J.; Tonnesen, G.; Morris, R.; Johnson, J.; Sakulyanontvittaya, T.; Piyachaturawat, P.; Yarwood, G.; Natural emissions for regional modeling of background ozone and particulate matter and impacts on emissions control strategies, *Atmos. Env.,* 44:19, 2372–2382.

regulations. We note that we are approving the vast majority of North Dakota's decisions.

Comment: One commenter stated that EPA should not ignore two of the three years of CALPUFF modeling results in our review of modeling results presented by North Dakota. The commenter suggested that this is inconsistent with EPA's typical practice of using long-term averages when addressing regional haze as is necessary to prevent undue influence from short-term events or unusual meteorological events.

Response: In our review of the single-source CALPUFF modeling results presented by North Dakota, we cited the change in the maximum 98th percentile impact over the modeled three year meteorological period (2001–2003). As the 98th percentile value is intended to reflect the 8th high value in any year, it already eliminates 7 days per year from consideration in order to account for short-term events, unusual meteorological conditions, and any over-prediction bias in the model. Therefore, the modeling results which we cited in our proposal are designed to exclude influence from unusual events or meteorological conditions and are sufficient to address the commenter's concerns. We also note that our approach is consistent with the method used by North Dakota in identifying subject-to-BART sources where a source is considered to contribute to impairment if it ''exceeds the threshold when the ninety-eighth percentile of the modeling results based on any one year of the three years of meteorological data modeled exceeds five-tenths deciviews.'' North Dakota RH SIP, p. 63. We find that this is a reasonable method for the purposes of evaluating visibility improvements associated with potential control options.

Comment: Commenters stated that EPA should not ignore the 90th percentile impact in our review of the CALPUFF visibility results presented by North Dakota.

Response: In the BART Guidelines, EPA addressed the appropriate interpretation of CALPUFF modeling results within the context of subject-to-BART modeling. We rejected the use of the 90th percentile because it would be inconsistent with the Act: ''The use of the 90th percentile value would effectively allow visibility effects that are predicted to occur at the level of the threshold (or higher) on 36 or 37 days a year. We do not believe that such an approach would be consistent with the language of the statute.'' 70 FR 39121. On the same page, EPA explained that the 98th percentile was sufficient to account for any overestimation of visibility benefits by CALPUFF.

While the BART Guidelines do allow states to consider the ''frequency, duration, and intensity'' of a source's visibility impact when making control determinations, the use of the 90th percentile would over-compensate for any uncertainties in CALPUFF and would underestimate visibility benefits from potential control options and unduly bias the resulting analysis. When the 90th percentile is used to assess predicted visibility improvement from a potential control option, the 37th or 38th highest predicted improvement value from 365 predicted daily values is selected; higher predicted improvement values on 36 or 37 days a year are ignored. This is not rational. In the actual BART determination, a state could so dilute the predicted visibility improvement, one of the very goals of CAA section 169A, as to nullify its initial determination using the 98th percentile that the source is subject to BART. Accordingly, the BART guidelines specifically mention the use of the 98th percentile as an option to compare pre- and post-control modeling runs; use of the 90th percentile is not mentioned. 70 FR 39170. Moreover, the FLMs have affirmed the use of the 98th percentile in their most recent guidance for evaluating visibility impacts at Class I areas. FLAG 2010, p. 23.[13]

Comment: One commenter stated that CALPUFF overpredicts visibility impacts associated with nitrates due to incorrect (too high) ammonia background. The commenter stated that monitored background ammonia data from Wyoming shows lower concentrations. The commenter also cites a study by Colorado Department of Public Health and Environment (CDPHE) related to the sensitivity of the CALPUFF model to ammonia background concentrations.

Response: The monthly ammonia background concentrations used by North Dakota were derived from data collected at the State's only ammonia monitor located near Beulah and range from a low of 0.98 ppb to a high of 2.29 ppb. (BART modeling protocol, Table 3–4). Due to their proximity to the North Dakota sources and Class I areas, the Beulah ammonia background concentrations are clearly more representative than those which the commenter cites for Wyoming that ''were on the order of only 0.1 ppb.'' We also note that, in its revised modeling, the commenter did not use alternate ammonia background concentrations that would differ from those used by North Dakota.

With regard to the ammonia background sensitivity study conducted by CDPHE,[14] the commenter has not shown that the study is relevant to North Dakota. CDPHE found that visibility impacts are ''not very sensitive to the background ammonia concentration across the range from 1.0 ppb to 100.0 ppb.'' *Id* at 24. Therefore, we disagree with the commenter's assertion that CALPUFF overpredicts visibility impacts associated with nitrates due to incorrect (too high) ammonia background.

Comment: One commenter cited a paper by Terhorst and Berkman (2010) regarding the impact of the Mohave Generating Station (MGS), also known as the Mohave Power Project (MPP), on visibility in the Grand Canyon. The MGS was located about 115 km from the Grand Canyon National Park (''GCNP'') and was shut down in 2005. Based on measured values, and after controlling for the prevailing environmental and anthropogenic factors in the region, the authors found virtually no evidence that the MGS closure improved visibility in the GCNP or that the plant's operation degraded it. This was in contrast to air quality transport models, including CALPUFF, that predicted visibility would have improved by 5% or more after closure.

Response: For the reasons stated in our responses to comments earlier in this section, our reliance on the CALPUFF modeling the State submitted in the SIP is reasonable. In addition, the study by Terhorst and Berkman does not convince us that use of CALPUFF modeling is inappropriate for this action or that the CALPUFF modeling results should be ignored. A model such as CALPUFF essentially holds constant a number of factors in order to isolate the impacts of a single source. As acknowledged by the study's authors, it is extremely difficult in observational analyses to sufficiently control for all factors, including emissions from other sources, to be able to isolate the impacts of closure of a facility, especially one located over 100 km from the Class I area at issue. In fact, the paper notes that coarse soil mass impacts are an omitted variable in the analytical analysis and that changes in those

[13] The complete reference is: U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. 2010. Federal land managers' air quality related values work group (FLAG): phase I report—revised (2010). Natural Resource Report NPS/NRPC/NRR—2010/232. National Park Service, Denver, Colorado.

[14] CALMET/CALPUFF BART Protocol for Class I Federal Area Individual Source Attribution Visibility Impairment Modeling Analysis, Colorado Department of Public Health and Environment, October 24, 2005.

emissions may have counteracted the visibility improvements expected from the source shutdown.

Comment: One commenter noted that the BART Guidelines allows states to consider if the time of year is important (e.g., high impacts are occurring during tourist season)''. 70 FR 39130. The commenter provided information that shows that 85% of all visits to Theodore Roosevelt National Park (TRNP) occur during the period from mid-May to mid-October but that nitrate concentrations measured at TRNP and Lostwood Wilderness Area (LWA) during this period are extremely low.

Response: We agree that our BART guidelines acknowledge that states may consider the timing of impacts in addition to other factors related to visibility impairment. However, states are not required to do so, and to our knowledge, this was not part of North Dakota's analysis. We are not required to substitute a source's desired exercise of discretion for that of the State's. Furthermore, for purposes of our FIP, we stand in the shoes of the State. In that capacity, we are not required to consider the seasonality of impacts, and we have chosen not to. The experience of visitors who come to the Class I areas in North Dakota during periods other than mid-May to mid-October is not discounted.

As a factual matter, the commenter's assertions are misleading. A review of the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data on the WRAP Technical Support System [15] reveals that significant nitrate impacts occur during periods of high visitation at TRNP. For example, the contribution to visibility impairment from nitrates in May and October of 2002 was 26.9% and 37.9%, respectively. There was also relatively high visitation to the Park during these months.[16]

Also, the commenter's reference to 40 CFR 51.301's definition of ''adverse impact on visibility'' is misplaced. This term is defined for purposes of 40 CFR 51.307 only and is not used in 40 CFR 51.308. Section 51.307 applies to new source review only, not to the regional haze program.

Comment: One commenter states that further controlling NO_X emissions from North Dakota sources would not advance the goal of improving visibility. The commenter bases this statement on (1) back trajectory analysis that shows that emissions from North Dakota point sources only impact TRNP and LWA a small part of the time, and (2) a modeling study of large North Dakota point sources of NO_X emissions that followed North Dakota's 2005 EPA-approved protocol and shows that these sources contribute a very small fraction of light extinction attributable to nitrates.

Response: We disagree that controlling large NO_X point sources in North Dakota will not advance the goal of improving visibility.

IMPROVE monitoring data shows that nitrates (from all sources) are among the highest contributors to visibility impairment at TRNP and LWA on the worst 20% visibility days. The contribution to visibility impairment from nitrate at TRNP from 2000–2004 ranged between 13.8% and 24.1%, with nitrate contributing more than any other pollutant in 2001 and 2002. Similarly, the contribution to visibility impairment from nitrate at LWA from 2000–2004 ranged between 19.2% and 31.5%, with nitrate contributing more than any other pollutant in 2004.

In order to help states identify the origins of haze-forming pollutants, such as nitrates, the WRAP conducted source apportionment analyses that identify the contribution from source regions and types to specific Class I areas. These source apportionment methods included CAMx Particle Source Apportionment Technology (PSAT) and the Weighted Emissions Potential (WEP). Both of these analysis tools can be found on the WRAP Technical Support System.[17] As described below, these analyses clearly demonstrate that North Dakota point sources are among the largest contributors to nitrates at TRNP and LWA on the 20% worst visibility days.

PSAT is a tracer analysis approach that utilizes a mass-tracking algorithm in the CAMx air quality model to explicitly track the chemical transformations, transport, and removal of haze-forming pollutants associated with a particular source region, source type, or combination of the two. The WRAP PSAT results demonstrate that in 2002, North Dakota point sources were the third and fifth largest contributors to nitrate on the worst 20% visibility days at TRNP and LWA, respectively (see charts and tables contained in docket).

The WEP analysis relies on an integration of gridded emissions data, back trajectory residence time data, a one-over-distance factor to approximate deposition, and a normalization of the final results. This method does not produce highly accurate results because, unlike the CAMx air quality model and associated PSAT analysis, it does not account for chemistry and removal processes. Nonetheless, it is more informative than the simpler back trajectory analysis submitted by the commenter because WEP incorporates gridded emissions in addition to back trajectory. The WRAP WEP results show that the grid cells in which the North Dakota BART sources are located have among the highest potential to contribute to nitrate on the worst 20% visibility days at TRNP and LWA (see graphics contained in docket).

Based on the WRAP source apportionment analyses, we find that there is ample evidence to conclude that further controlling NO_X emissions from North Dakota point sources would advance the goal of improving visibility.

Comment: One commenter submitted new single-source modeling for the AVS units that are subject to reasonable progress. The new modeling included results based on the current EPA-approved version of CALPUFF and use of annual average natural background conditions.

Response: In our proposal, we noted that North Dakota provided modeling results showing a ''visibility improvement of 0.754 deciviews at Theodore Roosevelt [2002] from the installation of LNB for both units combined.'' 76 FR 58632. The commenter's new modeling for the two units combined shows a visibility improvement of 0.39 deciviews at Theodore Roosevelt (98th percentile, 2002). As we have stated elsewhere in response to comments, EPA has not reviewed or approved the specific modeling methodology used by the commenter for AVS; because the newly submitted modeling uses annual average natural background conditions, it is not consistent with North Dakota's protocol for single-source modeling in the BART context. In our consideration of visibility improvement as an additional factor to the statutory and regulatory reasonable progress factors, we are not convinced that we must disregard North Dakota's visibility improvement value of 0.754 deciviews in favor of the commenter's lower estimate. For reasons already explained, we find it reasonable to continue to consider and rely on single-source CALPUFF modeling that has been conducted in accordance with North Dakota's modeling protocol for BART sources.

However, even if we were required to consider the commenter's new modeling results, they would not cause us to change our opinion about our disapproval of the State's determination

[15] *http://vista.cira.colostate.edu/tss/Results/HazePlanning.aspx.*

[16] *http://www.nature.nps.gov/stats/park.cfm?parkid=467.*

[17] *http://vista.cira.colostate.edu/tss/Results/HazePlanning.aspx.*

that no NO_X controls are needed at AVS 1 and 2 for purposes of reasonable progress or our determination that LNB must be installed for purposes of reasonable progress. The costs for LNB are very reasonable—$586 and $661 per ton for AVS 1 and 2, respectively. This is well below cost effectiveness values the State found reasonable in making some of its BART determinations. Also, the AVS units are not small EGUs. To the contrary, at 435 MW apiece, they are comparable to some of the larger EGUs in the State, and their NO_X emissions are considerably greater than emissions from some other EGUs in North Dakota. North Dakota predicted that LNB at AVS would achieve NO_X reductions of about 3,500 tons per unit per year. These reductions are substantially greater than those that will be achieved at the Stanton Station (maximum reduction of 983 tons per year, based on firing of lignite) and LOS 1 (reduction of 1,246 tons per year reduction), where the State selected SNCR as BART, and significantly greater than the reductions that will be achieved at CCS (reduction of 2,572 tons per year, based on our FIP), the largest EGU in the State. Finally, even the commenter's new modeling predicts combined visibility improvement of 0.39 deciviews for LNB on both units. Even if one were to consider this on a unit-by-unit basis, 0.2 deciviews per unit is significant, and we find that this level of visibility improvement, when considered along with the four statutory factors under reasonable progress, would continue to support our selection of LNB for AVS 1 and 2.

Comment: One commenter stated that: ''EPA has no basis in law for rejecting the cumulative modeling performed by the State for AVS since, as EPA admits, there is no requirement that visibility impacts be addressed under a four-factor analysis for a reasonable progress source. That is, there is no authority that precludes the State from modeling the way it did.'' In addition, EPA ignores the fact that reasonable progress is not the same as BART.

Response: The following language from 40 CFR 51.308(d)(1)(ii) applies because North Dakota established a RPG that provides for a slower rate of progress than would be needed to attain natural conditions by 2064:

> [T]he State must demonstrate, based on the factors in paragraph (d)(1)(i)(A) of this section, that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and that the progress goal adopted by the State is reasonable.

The factors in paragraph (d)(1)(i)(A) are ''the costs of compliance,'' ''the time necessary for compliance,'' ''the energy and non-air quality environmental impacts of compliance,'' and ''the remaining useful life of any potentially affected sources.'' ''Visibility improvement'' is not one of the factors listed. EPA is required to determine ''whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions.'' 40 CFR 51.308(d)(1)(iii). In doing so, we must ''evaluate the demonstrations developed by the State'' pursuant to (d)(1)(ii). There is accordingly no explicit requirement for the State to take into account visibility impacts in determining what measures are reasonable. For regional haze, which is caused by emissions from numerous sources located over a wide geographic area, this makes sense. Controls on one specific source may have little measurable impact on visibility, but controls on multiple similar sources would likely have an impact on improving visibility. We note that states are unlikely to reach the national goal without, at some point, focusing on emissions from a range of sources. In these first regional haze SIPs, however, states have focused on those individual sources with the largest potential impacts on visibility.

When a state considers the visibility improvement associated with controlling just one source or a small handful of sources in attempting to demonstrate that its progress goal is reasonable, it is not appropriate for the state to model visibility improvement on a source-by-source basis in a way that is inconsistent with the CAA. As discussed above, given the nature of visibility impairment, a single source's impact on visibility under current, degraded visibility conditions is much less than when compared against a clean background. North Dakota's approach using current degraded background would almost always result in the conclusion that reducing emissions will have little or no impact on visibility.

North Dakota used cumulative modeling, which assumed current degraded background to evaluate and reject single-source control options for reasonable progress for every reasonable progress source in North Dakota. Such an approach to single-source modeling is inconsistent with the CAA. As we explained in the TSD for our proposal, we had previously considered and rejected the use of current degraded background in promulgating the BART Guidelines.[18] The central logic of our interpretation, as expressed in the BART Guidelines, applies with equal force to single-source analysis of potential control options in the reasonable progress context. In the BART Guidelines, we said the following:

> In establishing the goal of natural conditions, Congress made BART applicable to sources which 'may be reasonably anticipated to cause or contribute to any impairment of visibility at any Class I area.' Using existing conditions as the baseline for single source visibility impact determinations would create the following paradox: the dirtier the existing air, the less likely it would be that any control is required. This is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less. Therefore the more polluted the Class I area would become, the less control would seem to be needed from an individual source. We agree that this kind of calculation would essentially raise the 'cause or contribute' applicability threshold to a level that would never allow enough emission control to significantly improve visibility. Such a reading would render the visibility provisions meaningless, as EPA and the States would be prevented from assuring 'reasonable progress' and fulfilling the statutorily-defined goals of the visibility program. Conversely, measuring improvement against clean conditions would ensure reasonable progress toward those clean conditions.
>
> 70 FR 39124.

In other words, it is our interpretation that North Dakota, if it wished to consider visibility improvement in single-source modeling of potential control options, could only reasonably do so by modeling those controls against natural background conditions. Thus, we reject the commenter's assertion. As we stated in our proposal, the statutory and regulatory goal is reasonable progress toward natural visibility conditions, not to preserve degraded conditions. 76 FR 58629. The State's and commenter's approach resulted in the rejection of very effective and inexpensive controls, and that approach could be used to preclude adoption of controls indefinitely. For the reasons expressed here and in our proposal, that is not reasonable.

Comment: Two commenters stated that EPA should consider the dollars per deciview ($/deciview) as a measure when making either BART or reasonable progress determinations. Both commenters suggested that EPA relied too heavily on cost effectiveness in evaluating control options. And both commenters claimed that EPA has

[18] Memorandum from Gail Tonnesen, Regional Modeler, to North Dakota Regional Haze File, dated September 1, 2011, regarding ''Modeling Single Source Visibility Impacts.'' This memorandum is included in Appendix B of the TSD for this action.

endorsed the dollar per deciview approach, citing relevant BART and reasonable progress guidance.

Response: For BART, the BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or $/ton. 70 FR 739167. The commenters are correct in that the BART Guidelines list the $/deciview ratio as an additional cost effectiveness metric that can be employed along with $/ton for use in a BART evaluation. However, the use of this metric further implies that additional thresholds or notions of acceptability, separate from the $/ton metric, would need to be developed for BART determinations. We have not used this metric for BART purposes because (1) It is unnecessary in judging the cost effectiveness of BART, (2) it complicates the BART analysis, and (3) it is difficult to judge. In particular, the $/deciview metric has not been widely used and is not well-understood as a comparative tool. In our experience, $/deciview values tend to be very large because the metric is based on impacts at one Class I area on one day and does not take into account the number of affected Class I areas or the number of days of improvement that result from controlling emissions. In addition, the use of the $/deciview suggests a level of precision in the CALPUFF model that may not be warranted. As a result, the $/deciview can be misleading. We conclude that it is sufficient to analyze the cost effectiveness of potential BART controls using $/ton, in conjunction with an assessment of the modeled visibility benefits of the BART control. We also note that North Dakota did not rely on the $/deciview metric in its evaluation of BART controls.

Within the context of reasonable progress, the *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,* page 5–2, states that ''[y]ou should evaluate both average and incremental costs.'' This is consistent with the approach under BART. As commenters note, the guidance then states that ''simple cost effectiveness estimates based on a dollar-per-ton calculation may not be as meaningful as a dollar-per-deciview calculation, especially if the strategies reduce different groups of pollutants.'' However, the guidance makes this statement on the basis that ''different pollutants differently impact visibility impairment.'' That is, for example, a one ton reduction in SO_2 would have a greater visibility benefit than a one ton reduction of coarse mass. As only SO_2 and NO_X controls were evaluated for the reasonable progress point sources, and these pollutants have similar impacts on visibility (per the IMPROVE equation),[19] the use of the $/deciview is not particularly relevant or informative. In addition, we did not use the $/deciview metric for our evaluation of RP controls for largely the same reasons as stated above for BART controls. As we noted in our proposal, ''it is important to recognize that dollars per deciview values will always be significantly higher, often by several orders of magnitude, than the more commonly used and understood dollars per ton values.'' 76 FR 58630. North Dakota's use of current degraded background in its modeling for potential single-source control options had the effect of greatly increasing the disparity between $/deciview and $/ton values because the modeling significantly underestimated the benefits of controls.

Comment: Commenters performed CALPUFF simulations using a revised CALPUFF version 6.4 that includes updates to the chemical and particle transformations and submitted these results to EPA during the comment period.

Response: We have already explained why we may reasonably rely on the modeling performed in accordance with the State's BART modeling protocol. We have additional reasons for disagreeing that the newer CALPUFF version 6.4 results should be used in this action to determine potential visibility impacts. The newer version of CALPUFF has not received the level of review required for use in regulatory actions subject to EPA approval and consideration in a BART decision making process. Based on our review of the available evidence, we do not consider CALPUF version 6.4 to have been shown to be sufficiently documented, technically valid, and reliable for use in a BART decision making process. In addition, the available evidence would not support approval of these models for current regulatory use. The newer versions of the model introduce additional chemical mechanisms that have not gone through the public review process required for approval by the Agency.

Comment: North Dakota's proposed RH SIP emission reductions are sufficient to meet the CAA's visibility objectives relative to the 2018 milestone. North Dakota's BART emission reductions properly and effectively reduce statewide haze production by more than the 23.3% fraction of the 60-year RHR timeline (by 2018). EPA improperly asserts that North Dakota cannot meet the 2018 URP. In fact, the infrequency of the winds blowing the major emission source plumes toward the Class I areas and the zero progress toward controlling Canadian and uncontrollable emissions (such as wildfires and windblown dust) are the cause of the inability for North Dakota to meet the 2018 milestone goal, not in-state source emissions. EPA should not penalize North Dakota and reject its RH SIP because North Dakota cannot control impacts from sources beyond its control. In fact, the RHR and the UARG settlement with EPA in 2006 state that, ''EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution.''

Response: Contrary to the commenter's assertion, the Class I areas in North Dakota will not meet the URP in 2018, something North Dakota acknowledges. We are not penalizing North Dakota, and we are not seeking controls in North Dakota to offset impacts from outside the State. We explain elsewhere why we are disapproving North Dakota's NO_X BART determination for CCS 1 and 2 and its reasonable progress determination concerning AVS 1 and 2. We are acting to ensure that reasonable BART and reasonable progress controls are put in place. North Dakota may not use out-of-state emissions as a basis to ignore controls on in-state sources where such controls are clearly reasonable. We note that we are approving the majority of North Dakota's BART and reasonable progress determinations and that our FIP is modest in scope.

Comment: One commenter notes that EPA's proposed FIP states that ''Appendix W outlines specific criteria for the use of alternate models and it does not appear that those criteria have been satisfied for the use of North Dakota's hybrid modeling.'' 76 FR 58624 and 58637. The commenter asserts that ''EPA does not, however, identify any criteria North Dakota purportedly did not satisfy.'' The commenter then seeks to supply, in retrospect, evidence that the criteria for alternative models, as specified in Appendix W section 3.2, are in fact met.

Response: As specified in Appendix W, ''[d]etermination of acceptability of a model is a Regional Office responsibility.'' 70 FR 68232. EPA Region 8 has not determined that North Dakota's hybrid modeling (aka ''cumulative modeling using current degraded background'') is acceptable for the purposes of assessing single-source visibility impacts under BART. In June 2007, EPA reviewed the ''Modeling Protocol for Regional Haze Reasonable Progress Goals in North Dakota.'' Our

[19] See Appendix A of our TSD for detailed explanation of the IMPROVE equation.

review of the protocol at that time was within the context of establishing RPGs, and not within the context of assessing single-source impacts under BART. Instead, and as described above, North Dakota prepared a separate modeling protocol for the purposes of BART. We reiterate that, as the State's single-source BART modeling followed established modeling guidance and was developed in consultation with FLMs and EPA, we find that it provides a reasonable basis for making control technology determinations.

Comment: Commenter stated that EPA notes in the FIP that ''North Dakota is the only WRAP State which opted to develop its own reasonable progress modeling methodology.'' Commenter stated that the NDDH modeling approach represents an adjustment, or a refinement (for pollutant transport and dispersion), of the cumulative reasonable progress modeling conducted by WRAP for western states. In particular, the NDDH modeling provides a much better resolution of source to receptor locations. Commenter stated EPA asserts that ''[t]he settings North Dakota used in the CALPUFF model within the hybrid modeling system would not be considered technically sound if contained in a regulatory modeling protocol in future projects.'' However, NDDH's modifications to the model settings allows North Dakota's specific environment to be considered.

Response: North Dakota designed its cumulative modeling system specifically to include transported pollutants, in addition to emissions from individual BART sources. North Dakota then used the model results to evaluate BART source visibility impacts relative to the cumulative impact of all other emissions sources. The State's cumulative approach contradicts the model approach recommended by EPA in the BART Guidelines in which BART source impacts are evaluated relative to natural background visibility. As discussed in the response to comments above, EPA specifically considered and rejected cumulative analyses for BART sources in the BART Guidelines. The effect of North Dakota's cumulative modeling approach is to evaluate BART visibility impacts relative to current degraded visibility conditions, and as described in the BART Guidelines and in response to comments above, this would create the paradox that, the worse the current visibility, the less likely it would be that any control would be required. The commenter also describes the State's approach as similar to the cumulative reasonable progress modeling conducted by WRAP for the western states. WRAP's cumulative reasonable progress modeling was designed to evaluate progress in reducing cumulative visibility impacts from all emissions sources for the worst 20% visibility days. WRAP's cumulative modeling did not evaluate the impacts from individual BART sources, and therefore WRAP also performed single source modeling using the CALPUFF model to evaluate single source BART impacts on the best visibility days. Moreover, WRAP followed the BART Guidelines in comparing those BART visibility impacts to natural visibility conditions on the 20% best days. While it could be reasonable to perform modeling for BART sources using CALPUFF with background concentration data from the Community Multi-Scale Air Quality (CMAQ) model, as North Dakota has done, the BART source visibility impacts must still be evaluated relative to natural background visibility. The State's approach of comparing the BART source impacts to cumulative visibility impacts is essentially the same as comparing those results to current degraded visibility conditions, and, therefore, does not follow the guidelines established by EPA and followed by both WRAP and all other states. As noted in other responses, the reasons for our rejection of North Dakota's modeling approach in the BART context also apply to North Dakota's use of that approach to model the visibility benefits of single-source control options in the reasonable progress context.

Comment: Commenter states that the cumulative approach is exemplified in the refined visibility modeling conducted by WRAP for western states (which EPA has endorsed in Appendix A of the TSD to its FIP proposal).

Response: Our applicable response to a similar comment is provided elsewhere in this section. Such an approach is suitable for determining the cumulative benefit of an overall control strategy vis-à-vis the URP on the 20% worst days. It is not suitable for evaluating the benefits of potential control options at individual sources.

Comment: Commenter stated that EPA suggests that using single source modeling based on natural background conditions is appropriate for assessing visibility improvement from BART controls, because the goal of the regional haze program is to ultimately have natural background visibility conditions. NDDH provides a number of technical weaknesses of single source modeling with natural background. For example, North Dakota asserts the single source modeling overstates perceived visibility changes and ignores the impact of all other sources on background visibility.

Response: We address these assertions in our responses to other comments in this section.

Comment: One commenter stated that it is appropriate to consider both the degree of visibility improvement in a given Class I area as well as the cumulative effects of improving visibility across all of the Class I areas affected. The commenter contends that not considering the cumulative improvement across multiple Class I areas ignores impacts to all but the most impacted Class I area.

Response: In its SIP, North Dakota considered the visibility improvement at both TRNP and LWA. Therefore, the modeling analyses presented by North Dakota did not ignore the visibility improvement that would be achieved at areas other than the most impacted Class I area. In our proposal, for convenience, we generally only cited the visibility improvement at Theodore Roosevelt, the most impacted Class I area in the baseline modeling. However, our evaluation of the visibility benefits was made in consideration of all of the single-source modeling results presented in North Dakota's SIP.

Comment: One commenter stated that they shared our concern that North Dakota did not adequately consider the visibility benefits of the control strategies it evaluated. Specifically, the commenter pointed out that for three EGUs, North Dakota used incorrect techniques to assess (and underestimate) visibility improvements. That is, instead of evaluating a candidate BART strategy by determining the visibility improvement that would result from that particular strategy versus a ''standard'' baseline (e.g., the proposed SO_2 control options), the only analyses of visibility improvements were of the incremental differences between competing BART options.

Response: We agree that the visibility improvement of a control technology should be assessed relative to a pre-control baseline. As we have noted elsewhere in our response to comments, this approach is recommended in the BART Guidelines. 70 FR 39170. However, where North Dakota failed to provide this information, we were able to rely on the incremental visibility improvement over lower control options. Our evaluation of the visibility benefits for the three EGUs in question took into account that the lower visibility improvement presented by North Dakota was simply an artifact of the methodology.

Comment: One commenter stated that North Dakota should have treated TRNP

as single Class I area in their modeling analyses.

Response: We concur that TRNP should have been treated as a single Class I area in the modeling analyses. However, we have no evidence that doing so would have led to control technology determinations different than those made by North Dakota or EPA.

Comment: One commenter suggested that EPA could have addressed modeling issues that it identified in its proposal by conducting its own modeling analyses, as it did regarding BART determinations in other EPA regional offices.

Response: As stated elsewhere in our responses to comments in this section, we find that North Dakota's single-source modeling provides a reasonable basis for making control technology determinations. Therefore, we did not find it necessary to conduct our own modeling analyses.

Comment: From a visibility impairment standpoint, it appears to be more beneficial to reduce NO_X than to reduce SO_2 in North Dakota's cool climate. However, by placing more emphasis upon cost per-ton ($/ton) of pollutants removed than on visibility improvement, the advantages of reducing NO_X versus SO_2 are overlooked if both are measured with the same $/ton yardstick. For this reason, we recommend that the primary emphasis should be placed upon the dollars per deciview of improvement. EPA has stated in its Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program (June 1, 2007), ''in assessing additional emissions reduction strategies for source categories or individual, large scale sources, simple cost effectiveness based on a dollar-per-ton calculation may not be as meaningful as a dollar per deciview calculation.'' The same logic applies to BART. Nevertheless, the commenter notes that both North Dakota and EPA have based their BART determinations on cost-per-ton of pollutant removed, and the commenter included information to show that the EPA BART proposals are internally consistent and reasonable.

Response: As noted elsewhere, evidence we have reviewed suggests that the relative benefits are similar. In any event, we have not ignored visibility benefits in our assessments. It is not necessary to use dollars per deciview to reasonably consider the regulatory factors and arrive at reasonable control determinations. As we have explained in responses to other comments in this section, there can be significant issues with the use of dollars per deciview values.

Comment: One commenter suggested that the modeling issues raised by EPA, including the use of a degraded background, should be addressed as part of North Dakota's 2013 ''mid-course correction'' and that more emphasis should be placed upon the cumulative visibility benefits that could be derived from the BART program.

Response: The requirements for periodic reports describing progress towards the RPGs are contained in the RHR (40 CFR 51.308(g)). The RHR does not explicitly require that updated visibility modeling be included as an element of the periodic progress report. Nonetheless, to the extent that North Dakota chooses to submit updated modeling to meet other periodic progress reporting requirements, we will address it at that time.

D. Comments on Costs

1. General

Comment: Commenter stated that EPA cannot replace the State's site-specific cost estimates solely for the purpose of ensuring consistency across states. EPA also cannot reject cost items because EPA deems them atypical. Doing so undermines the statute, which provides that BART is a state determination.

Response: As we explain in our response to a previous comment, we have authority to assess the reasonableness of a state's analysis of costs. We are not relegated to a ministerial role. We have not replaced cost estimates solely for the purpose of ensuring consistency across states. When a source puts forward costs estimates that are atypical, it is reasonable for us to scrutinize such estimates more closely to determine whether they are reasonable or inflated. Also, given that the assessment of costs is necessarily a comparative analysis, it is reasonable to insist that certain standardized and accepted costing practices be followed absent unique circumstances. Thus, our BART guidelines state, ''In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible.'' 70 FR 39166.

Comment: Commenter stated that EPA misapplies cost effectiveness to measure emissions reductions, because the purpose of BART is visibility improvement. Citing the BART Guidelines, commenter stated that more weight should be placed on the incremental rather than the average cost effectiveness.

Response: In our review and analyses, we have considered cost effectiveness values in conjunction with estimates of visibility improvement. Our analysis methods are consistent with those called for by the BART guidelines. We have considered both average and incremental cost effectiveness. The BART guidelines do not require that greater weight be placed on incremental cost effectiveness and advise the use of caution not to misuse the cost effectiveness values. 70 FR 39167–39168.

Comment: Commenter stated that EPA cannot replace the statutory requirement that states weigh costs of compliance with a requirement that states select BART based on a uniform national cost effectiveness metric. Commenter further stated that EPA essentially elevated cost effectiveness to being a statutory factor for BART determinations in the BART Guidelines, and that this was incorrect based on CAA section 169(A).

Response: For power plants larger than 750 MW, the BART guidelines are mandatory and specify that the Control Cost Manual should be used to estimate costs where possible and that cost effectiveness in $/ton be considered. We note that it is too late to challenge the BART guidelines in this action. That said, the BART Guidelines do not, as the commenter contends, require states to select BART based on a ''uniform national cost effectiveness metric'' without consideration of the other relevant factors.

For BART sources other than power plants larger than 750 MW, North Dakota has specified in its SIP that the BART guidelines must be used as guidance. Furthermore, any analysis of the costs of compliance must be reasonable, and the starting point is an accurate estimate of the costs of potential control options. From there, we must have some means to assess the reasonableness of the costs, and cost effectiveness in $/ton is a widely used and understood metric.

Comment: Commenter stated that, in the preamble to the RHR, EPA established a cost effectiveness value threshold of $1,350/ton for NO_X retrofit control technologies. Another commenter cited appendix Y, alleging that it states that NO_X control costs above $1,500/ton are not cost effective for BART. Commenter stated that EPA is therefore inaccurate in the FIP for citing NO_X control costs over $1,500 per ton as cost effective.

Response: EPA disagrees. While EPA described various dollar-per-ton costs as ''cost-effective'' in various preambles (e.g., 70 FR 39135–39136), EPA did not establish an upper cost effectiveness

threshold for BART determinations. We note that North Dakota and other states have identified NO_X control costs well over $1,500 per ton of emissions reduced as being cost effective, and that the relevance of a particular dollar-per-ton figure for controls will depend on consideration of the remaining statutory factors.

2. Comments Regarding Our Reliance on the EPA Air Pollution Control Cost Manual

Comment: One commenter stated that the Control Cost Manual is in no way binding, and that any deviation from the manual by the State is no cause for SIP disapproval. The commenter also stated that cost analyses must take into consideration source-specific costs.

Response: In today's rule, we are disapproving the BART determination for one source, CCS. We note that the BART guidelines are mandatory for CCS because it is larger than 750 MW. The BART Guidelines state that ''[i]n order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, [now renamed ''EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B–02–001, January 2002] where possible.'' 70 FR at 39166. In addition, the preamble to the BART Guidelines states that ''[w]e believe that the Control Cost Manual provides a good reference tool for cost calculations, but if there are elements or sources that are not addressed by the Control Cost Manual or there are additional cost methods that could be used, we believe that these could serve as useful *supplemental information*.'' 70 FR 39127 (emphasis added). Finally, the BART Guidelines are clear that ''cost analysis should also take into account any site-specific design or other conditions * * * that affect the cost of a particular BART technology option.'' 70 FR 39166. However, documentation of cost estimates is necessary, particularly for items that deviate from the Control Cost Manual: ''You should include documentation for any additional information you used for the cost calculations, including any information supplied by vendors that affects your assumptions regarding purchased equipment costs, equipment life, replacement of major components, and any other element of the calculation that differs from the Control Cost Manual.'' Id. In sum, the BART Guidelines direct states to use the Control Cost Manual where possible, but also allow for the use of supplemental information and site-specific factors, as necessary, as long as the latter information is justified and documented.

The Control Cost Manual contains two types of information: (1) A generic costing methodology, known as the overnight method and (2) study level capital cost estimates for certain general types of pollution control equipment, such as SCR. The overnight method has been used for decades for regulatory control technology cost analyses.[20] While we agree that the strict application of the study level analysis is not required in all cases, we maintain that following the overnight method ensures equitable BART determinations across states and across sources. Cost effectiveness is determined by comparing annual cost per ton of pollutant removed for the source of interest to the range of cost effectiveness values for other similar facilities calculated in the same way. If a given cost effectiveness value falls within the range of costs borne by others, it is per se cost effective unless unusual circumstances exist at the source. 70 FR 39168. Thus, cost effectiveness is a relative determination, based on costs borne by other similar facilities. To compare costs among units, a level playing field must be established by following the same cost rules in each determination.[21] Thus, in evaluating BART cost effectiveness, it is important that a consistent set of rules be used. Otherwise, one runs the risk of comparing two approaches that cannot be validly compared when making the cost effectiveness determination. This concept of comparability is integral to the achievement of the national goal specified in CAA section 169A and its legislative history as discussed elsewhere in our response to comments—visibility impairment and improvement is not merely a state or local concern. It impacts visitors to our national parks and wilderness areas from all across the United States.

The cost estimates supplied by North Dakota were frequently based on cost estimating methods that deviate from the overnight method that is used for regulatory purposes. As described above, these costs are not suitable for the purpose of determining whether the costs of BART controls are reasonable relative to costs incurred at other facilities.

Comment: One commenter stated that EPA ignores the disclaimer in the Control Cost Manual that the manual does not address controls for EGUs. To support this position, the commenter provides the following quote from the Control Cost Manual:

> ''Furthermore, this Manual does not directly address the controls needed to control air pollution at electrical generating units (EGUs) because of the differences in accounting for utility sources. Electrical utilities generally employ the EPRI Technical Assistance Guidance (TAG) as the basis for their cost estimation processes.'' [1]

The commenter also provides footnote 1 to this quote which reads as follows:

> ''This does not mean that this Manual is an inappropriate resource for utilities. In fact, many power plant permit applications use the Manual to develop their costs. However, comparisons between utilities and across the industry generally employ a process called ''levelized costing'' that is different from the methodology used here. (*EPA Air Pollution Cost Control Manual, Sixth Edition* page 1–3)''

Response: We disagree with the commenter's conclusion regarding this quote from the Control Cost Manual. The quote is merely a factual observation; electric utilities, in their planning and cost estimating for their own purposes, use a different accounting method than required by the Control Cost Manual. The footnote clarifies that the Control Cost Manual is appropriate for utilities for regulatory purposes.

The utility industry uses a method known as ''levelized costing'' to conduct its internal comparisons.[22] The utility industry's levelized costing methods differ from the methods specified by the Control Cost Manual. Utilities use ''levelized costing'' to allow them to recover project costs over a period of several years and, as a result, realize a reasonable return on their investment. The Control Cost Manual uses an approach sometimes referred to as ''overnight costing'' that treats the costs

[20] See, for example, the NSR Manual, Appendix B, which lays out the overnight method currently required in the Control Cost Manual.

[21] See discussion of this issue in Letter from John Bunyak and Sandra V. Silva, Fish & Wildlife Service, to Mary Uhl, New Mexico Environmental Department, August 17, 2010, p. 5, footnote 9 (November 7, 2007, statement from EPA Region 8 to the North Dakota Department of Health: ''* * * in order to maintain and improve consistency, cost estimates should be based on the OAQPS Cost Control Manual. Therefore, these analyses should be revised to adhere to the Cost Manual methodology.''), p. 6 (quoting a May 10, 2010 EPA letter to North Dakota Department of Health: ''These accounting items [owner's cost] are unauthorized under the Cost Control Manual, create an unlevel playing field for comparison with other BACT analyses and alone account for an increase in capital costs from the Cost Control Manual by a factor of 1.6.''). See discussion in: Letter from Andrew M. Gaydosh, Assistant Regional Administrator, EPA Region 8, to Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health, Re: EPA's Comments on the North Dakota Department of Health's April 2010 Draft BACT Determination for NO_X for the Milton R. Young Station, May 10, 2010, pp. 14–16.

[22] As explained in the next response, the Control Cost Manual allows the use of levelized costing, but it is different from the levelized costing that the utility industry prefers.

of a project as if all the materials and labor are paid for within a very short period of time. The Control Cost Manual approach is intended to allow a fair comparison of pollution control costs between similar applications for regulatory purposes.

Estimates prepared using the utility industry's levelized costing are not comparable to estimates prepared using the Control Cost Manual. Estimates using the utility industry's levelized method are generally higher than EPA cost effectiveness estimates since the utility industry's levelized method estimates are stated in future dollars and include costs not included in the EPA method, such as inflation and interest during construction. That is why the BART guidelines specify the use of the Control Cost Manual where possible and why it is reasonable for us to insist that the Control Cost Manual method be used to estimate costs. This is the method that has been used to determine the reasonableness of cost effectiveness values in regulatory settings for many, many years; it ensures the use of a common, well-understood metric. Without a like-to-like comparison, it is impossible to draw rational conclusions about the reasonableness of the costs of compliance for particular control options.

Comment: Commenter stated that EPA's rejection of levelized costs is inconsistent with the Control Cost Manual. Commenter also cites EPA's New Source Review (NSR) Manual to argue that levelized costs are acceptable and should not be disapproved.

Response: The issue here is one of semantics rather than a dispute over levelization. We agree levelization is allowed by the Control Cost Manual, and we levelized costs in preparing cost estimates for our proposal. However, the commenter levelized in nominal dollars, while EPA's consultant levelized in constant dollars consistent with the Control Cost Manual. The constant dollar approach is the correct approach. It levelizes O&M costs excluding inflation.

The Control Cost Manual approach equalizes all future O&M costs into equal annual payments in constant dollars over the life of the system, translated to year zero using the Equivalent Uniform Annual Cash Flow method or EUAC. See also NSR Manual, p. b.4. The dispute arises over the inclusion of inflation. The Control Cost Manual ''recommends making cost comparisons on a current real dollar basis'' * * *.'' ''The constant dollar approach described in the Control Cost Manual annualizes (in constant dollars) the cost of installation, maintenance, and operation of a pollution control system * * *'' ''The estimator can levelize annual O&M costs over the life of the project, consistent with the manual's constant dollar approach * * *'' The commenter asserts that the NSR Manual directs the use of levelized cost in the PSD context, but we note this source also clarifies that the interest rate used to annualize the cost ''does not consider inflation.'' NSR Manual, p. b.11.

Comment: One commenter stated that comparing the State's and EPA's cost methods is essentially comparing apples to oranges. The commenter stated that, because EPA uses a cost method which is uniform and relied upon nationwide, and North Dakota and the utilities' cost method ''markedly deviates from EPA's cost method, reliance on the estimates produced by the State are unreasonable.''

Response: We agree with the commenter that the costs developed by the State are in many cases not directly comparable to those prepared by EPA. In particular, costs developed using the overnight cost method for (environmental) regulatory purposes are not directly comparable to those developed using the utility cost method. Both approaches are correct for their respective purposes, but each must be used within the appropriate context. We also agree that consistency of methods is necessary to ensure that costs are assessed equitably. In our proposal, where we compared our costs with those supplied by North Dakota, we identified where different cost methods and assumptions were used. While we don't always agree with every detail of the State's cost estimates, we explain in other responses the bases for our conclusions that the State's control determinations are reasonable or unreasonable.

Comment: Commenter also listed several reasons why it believes the Control Cost Manual does not provide accurate estimates of current SNCR costs.

Response: Our reliance on the Control Cost Manual is addressed above. As stated, the BART Guidelines direct states to use the Control Cost Manual where possible, but to also allow for supplemental information and take into account site-specific factors as necessary, as long as the latter information is justified and documented. Accordingly, where appropriately justified and documented, we have incorporated site-specific costs into our SNCR cost estimates. We also note that our SNCR cost effectiveness values compare well with the range cited by the vendor community of $1,500 to 2,500 per ton of NO_X removed.[23]

E. Comments on BART Determinations

1. General Comments

Comment: Commenter stated that EPA's proposed incorporation of a ''margin of compliance'' into its BART determinations is contrary to the CAA, and is not supported by EPA's own regulations and guidance. Commenter specifically cited EPA's proposed increase of the MRYS Units 1 and 2 NO_X emission limits from .05 lb/MMBtu to .07 lb/MMBtu, stating that this was a weakening not allowed by the CAA and reliant on factors that were not articulated in the CAA. Commenter used this rationale in stating that EPA must establish BART emission rates of .05 lb/MMBtu for MRYS Units 1 and 2 and LOS Unit 2, and a BART emission rate of .108 lb/MMBtu for CCS Units 1 and 2. Another commenter stated that as a general note, in almost every instance North Dakota, and by extension EPA, has converted the purportedly annual emission rate used in the BART analyses to a 30-day emission limit by increasing it by a seemingly arbitrary percentage increase. This has ranged from a low percentage up to at least 40%. There is no support in the record for these increases, and it is not always clear that the original levels are not feasible as 30 day limits. While the commenter agreed that there can be additional variability in 30-day averages as compared to annual, EPA must adequately support any changes it makes to the emission levels analyzed.

Response: In keeping with the BART Guidelines, we evaluated cost effectiveness on an annual basis. Specifically, we calculated cost effectiveness as the total annualized costs of control divided by annual emissions reductions. When discussing cost effectiveness in our proposal, we gave both the emissions reductions and emission rates (lb/MMBtu) on an annual basis. By contrast, the BART Guidelines indicate that EGU BART emission limits should be specified as 30-day rolling average limits. It is commonly understood that shorter averaging periods result in higher variability in emissions due to load variation, startup, shutdown, and other factors. However, BART emission limits must be met on a continuous basis. Accordingly, we have not generally required 30-day rolling average emission limits equal to the annual emission rates used for calculating cost effectiveness. We find it

[23] Institute of Clean Air Companies, White Paper Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, February 2008, p. 4.

is reasonable to allow a margin for compliance for the 30-day rolling average limits. In our experience, 30-day rolling average emission rates are approximately 5–15% higher than the annual emission rate. Therefore, we disagree with the commenter's assertion that North Dakota and EPA arbitrarily adjusted the annual emission rates when setting 30-day rolling average emission limits.

Comment: Commenter stated that EPA is requiring the use of unit-by-unit emission limits, though the State is within its rights to allow plant-wide averaging (citing 70 FR 39172).

Response: We agree with the commenter that unit-by-unit emission limits are not strictly required. However, it is within the discretion of North Dakota to establish unit-by-unit emission limits. Where we are approving North Dakota's BART determinations, we are accepting the basis for emission limits that they selected. In the case of Coal Creek, which is included under our FIP, we have clarified in our final action that Unit 1 and Unit 2 emissions may be averaged provided that the average does not exceed the limit.

2. CCS Units 1 and 2

a. EPA's Use of the Control Cost Manual for CCS

Comment: Commenter (GRE) stated that EPA guidelines as provided to states in identifying regional haze control requirements and as provided in EPA's Control Cost Manual are best suited for evaluating average or typical installations. Commenter stated that because CCS 1 and 2 are uniquely designed and employ DryFining™ technology, any accurate analysis of add-on NO_X controls must be site-specific and not rely on general guidelines which might apply to a normal facility.

Response: As required by North Dakota, GRE provided a BART analysis for CCS to the State in 2007. That analysis included an analysis of potential NO_X controls, including SNCR. For several significant elements of its analysis of SNCR, GRE relied on EPA's Control Cost Manual.[24] This was consistent with EPA's BART Guidelines, which are mandatory for CCS and which provide that cost estimates should be based on the Control Cost Manual where possible. 70 FR 39166. GRE now essentially criticizes its own earlier analysis, claiming that it was done only at a screening level. However, to the extent GRE believed that unique characteristics at CCS required more site-specific information or more in-depth analysis, GRE could have and should have performed that analysis in 2007.

Nonetheless, we have evaluated GRE's new analysis. For reasons we explain below, we have serious concerns about the validity and accuracy of GRE's new analysis and we find it is reasonable for us to continue to rely on cost estimates based on EPA's Control Cost Manual, as described in our proposal. See 76 FR 58620. Every facility has unique elements; however, we do not agree that the elements at CCS are so unique that use of the Control Cost Manual is inappropriate. Also, we note that DryFining™ was not installed until after the baseline period and was installed voluntarily, not to meet any regulatory requirement. We are not required to revisit the baseline controls or reconsider cost estimates based on voluntarily installed controls. On the contrary, there are significant issues with such an approach; it would tend to reward sources that install lesser controls in advance of a BART determination in an effort to avoid more stringent controls.

Comment: Commenter stated that the removal efficiency for CCS 1 would not be 50% as anticipated from the EPA Pollution Control Cost Manual and as used in GRE's original BART analysis, but would rather be 30% and 20% for Units 1 and 2 respectively. The commenter asserted that these emission estimates clearly change the basis for any cost effective determination. The commenter references Appendix B to GRE's November 2011 Refined Analysis ''cost and performance review'' by URS, which provides control efficiency data as a function of inlet NO_X concentrations for 55 existing SNCR installations.

Response: We disagree with this comment. We proposed a control efficiency of 49% for CCS 1 and 2 based on the combination of both enhanced combustion controls and post combustion controls. We have reviewed GRE's refined analysis, and we are not convinced that our 49% assumption is unreasonable. To the contrary, this level of NO_X reduction still appears achievable.

The URS report that GRE references to support its claim of reduced control efficiency values provides a plot in which NO_X control efficiency is plotted as a function of inlet NO_X concentrations. The URS plot does not provide the boiler sizes which would be necessary for a comparison to the data in the Control Cost Manual, or for comparison to the control efficiency we used in the proposed FIP. Table 3.1, ''Control Cost Summary,'' in GRE's Refined Analysis shows control efficiencies of 25% and 20% for Units 1 and 2 respectively, which differ from GRE's assessment of a 50% control efficiency in its original August 2007 BART analysis and its July 2011 corrected analysis.[25] [26] GRE's earlier 50% control efficiency was a reduction from the 0.22 lb/MMBtu baseline (which included existing LNB with a level of SOFA) to an emission limit of 0.11 with the addition of only SNCR controls (no additional or enhanced combustion controls). While we would not expect CCS could achieve a 50% control efficiency from the installation of SNCR alone, we do find our estimated 49% control efficiency reasonable based on the installation of both SNCR and enhanced combustion controls (SOFA plus LNB or LNC3).[27]

We proposed a NO_X BART FIP limit for CCS 1 and 2 of 0.12 lb/MMBtu that would apply to each unit singly on 30-day rolling average basis. We based this limit on our proposed finding that SNCR plus SOFA plus LNB was BART. While we continue to find that SNCR plus SOFA plus LNB is BART, we are changing the emission limit to 0.13 lb/MMBtu averaged over both units on a 30-day rolling average basis. Evidence submitted by commenters and our own additional analysis in evaluating comments has led us to conclude that this represents a more reasonable limit to apply on a 30-day rolling average basis.

This limit represents a control efficiency of 47.8% based on the average annual baseline emission rate of 0.22 lb/MMBtu (2003–2004) provided in the State's BART determination. This value is slightly lower than the 49% control efficiency we assumed in our proposal, a value that was based on the State's analysis. Beginning in 2010, CCS 2 voluntarily started employing LNC3, the more stringent level of combustion controls that the State evaluated in its

[24] GRE also included estimates for certain elements based on site-specific information. As discussed in other responses, some of these elements should not be included in the cost estimates for CCS.

[25] North Dakota RH SIP, Appendix C.2, Great River Energy, Coal Creek Stations, Units 1 and 2, BART Analysis, Revised December 12, 2007, Table 4–2, p. 26.

[26] Great River Energy Letter, July 15, 2011, Docket EPA–R08–OAR–2010–0406–0079, Table A–1a, pdf p. 7.

[27] LNC3 is an EPA acronym for low NO_X coal-and-air nozzles with close-coupled and separated overfire air which is one configuration among several that are considered SOFA. GRE used the acronyms LNC3 for the controls installed on Unit 1 and LNC3+ for the additional controls installed on Unit 2. For the purposes of our action, we are treating both units identically and refer only to LNC3.

BART determination. Annual average Clean Air Markets data for this unit reflects a NO_X emission rate of 0.153 lb/MMBtu. We estimate that SNCR would achieve an additional 25% reduction, equivalent to an emission rate of 0.115 lb/MMBtu. This compares to a value of 0.108 lb/MMBtu that the State originally estimated.

GRE asserted in comments that SNCR will only achieve a 20% reduction beyond LNC3. We find that 25% is a conservative and reasonable estimate. We considered several sources of information in arriving at this value. First, the Control Cost Manual states that in typical field applications, SNCR provides a 30% to 50% NO_X reduction. The manual provides a scatter plot with NO_X reduction efficiency plotted as a function of boiler size in MMBtu/hr.[28] The plot supports GRE's assertion that control efficiency could be lower than 50%, and could approach 30%, for larger boilers such as those at CCS. Second, Fuel Tech (one of the most recognized SNCR technology suppliers) estimates a range of 25% to 50% NO_X reduction with application of SNCR.[29] Lastly, ICAC has published information that supports a control efficiency of 20 to 30% for SNCR above LNB/combustion modifications.[30] Given this range of control efficiencies, we have settled on a control efficiency that is lower than the lowest value given by the Control Cost Manual, at the low end of the range estimated by Fuel Tech, and in the middle of the range estimated by ICAC.

To arrive at a final BART emission limit, we adjusted the projected annual average of 0.115 lb/MMBtu upward by 10% and then rounded to the nearest hundredth to arrive at 0.13 lb/MMBtu. In our experience, a 5 to 15% upward adjustment is appropriate when converting an annual average emission rate to a limit that will apply on a 30-day rolling average to account for the fact that shorter averaging periods result in higher variability in emissions due to load variation, startup, shutdown, and other factors.

As discussed in another response above, we do not agree with GRE that it is appropriate to lower the baseline emission rate based on GRE's voluntary installation of combustion controls on Unit 2 in 2010, well after the State established the historic baseline of 2003–2004 for BART planning. Use of such lower baseline rate would inappropriately skew the 5-factor BART analysis by reducing the emissions reductions from combinations of control options and increasing the cost effectiveness values.

b. CCS Emission Limits

Comment: Commenter stated that 30-day rolling limits are intended to be inclusive of unit startup and shutdown as well as variability in load. Consequently, associated BART limits must be higher than stated annual averages used for estimating cost effectiveness.

Response: As described in the proposed FIP, in proposing a BART emission limit of 0.12 lb/MMBtu, we adjusted the annual design rate of 0.108 lb/MMBtu upwards to allow for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including during startup, shutdown, and malfunction. While we proposed a BART limit of 0.12 lb/MMBtu, we invited comment on whether we should impose a different emission limit of 0.14 lb/MMBtu on a 30-day rolling average. After considering all comments, we have settled on a limit of 0.13 lb/MMBtu on a 30-day rolling average. We explain the basis for this limit in this section as well as in section III above.

c. CCS Modeling

Comment: Commenter stated that pollutant interaction has an impact on modeled visibility impairment and, as such, GRE believes that modeling changes to NO_X emission rates alone will not provide visibility modeling results that are representative of actual emission controls. Commenter asserted that this may overstate visibility improvement as compared to modeling NO_X, SO_2 and $PM_{2.5}$ together. However, for the purpose of illustrating the relative visibility impacts of SNCR and LNC3, the commenter presented an analysis of the incremental modeled impacts.

Response: Our review of North Dakota's and GRE's CALPUFF input files reveals that SO_2, NO_X, and particulate matter (PM) emission changes were in fact modeled together. All of the NO_X control options were modeled along with the SO_2 emission reductions that would be achieved from either a new scrubber or modifications to the existing scrubber. However, in order to determine the distinct visibility improvement from the NO_X control options, it is necessary to compare the modeled impacts to a pre-control scenario. This is in fact the approach prescribed by the BART Guidelines which state that you should ''[a]ssess the visibility improvement based on the modeled change in visibility impacts for the pre-control and post-control emission scenarios.'' 70 FR 39170. As noted in our proposal, because North Dakota did not provide visibility benefits relative to a pre-control baseline, ''it [was] not possible to describe the incremental visibility benefits of SNCR, or other NO_X control options, over the selected SO_2 BART control (scrubber modifications at 95% control).'' 76 FR 58623. As a result, we were only able to specify the incremental visibility benefit between NO_X control options. In our evaluation of BART for NO_X at CCS, we weighed the visibility factor in consideration of the fact that the improvement was incremental to lower NO_X controls and not relative to a pre-control baseline. We are not able to assess the visibility benefit information the commenter provided in Table 3.3.1 of the comments due to the lack of documentation and detailed explanation of the information presented.

d. CCS Coal Ash

Comment: GRE references Appendix C to its Refined Analysis ''Fly Ash Storage and Ammonia Slip Mitigation Technology Evaluation.'' GRE claims that its previous estimates of fly ash sales and disposal costs were ''screening level values'' and the Appendix C report provides a more comprehensive assessment of ash implications associated with SNCR installation. GRE states that the report illustrates that any ash impact costs add to the total cost of SNCR and make it less cost effective.

Response: Based on further analysis, we are not convinced that the use of SNCR will impact GRE's ash sales. We explain this more fully in the responses below. Also, regarding specific sales price and costs numbers, we are not convinced that GRE's Appendix C report, included with its comments, provides a more realistic picture of these values. We provide more detailed information in other responses.

Comment: GRE stated that mandating SNCR will leave GRE in a vulnerable position where it would expect to incur significantly higher costs from lost ash sales and increased landfilling. Commenter stated that GRE would expect to annually incur between $4,435,000 and $8,988,000 in additional ash costs. Commenter's contractor, Golder Associates, provided a revised analysis that included three potential scenarios of SNCR's impact to fly ash sales (GRE Appendix C): A. Sales are not affected; B. Worst case scenario—no

[28] U.S. EPA, EPA Air Pollution Control Cost Manual, EPA/452/B–02–001, 6th Ed., January 2002, Section 4.2, Chapter 1, p. 1–3.

[29] *http://www.ftek.com/en-US/products/apc/noxout/*.

[30] Institute of Clean Air Companies, White Paper Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, February 2008, p. 9.

ash sales; and C. 30% reduction in ash sales. Commenter asserted that scenario A is extremely unlikely, scenario B is a likely outcome, and scenario C is optimistic.

Response: In the proposed FIP, EPA agreed that use of SNCR might result in lost ash sales and the need to landfill fly ash due to ammonia contamination. These additional costs were included in our cost analysis supporting the FIP. However, we also invited comment on the assumption that use of SNCR would result in lost fly ash sales and on the availability of ammonia mitigation techniques. 76 FR 58620. We received responsive comments on both sides of the issue.

In the proposed FIP, EPA included costs of $2,023,000 for ''additional ash disposal'' and $2,023,000 for ''lost ash sales'' (76 FR 58621). EPA arrived at these values based on information that GRE itself supplied in July 2011. Based on an analysis performed by a consultant, GRE now asserts that the information GRE supplied in June and July 2011, regarding the sales price for fly ash and the costs for fly ash disposal, was not accurate. GRE supplied this information initially in June 2011 when it discovered that the information that it supplied to the State regarding these values in 2007 was inaccurate.

As part of our consideration of GRE's comments, and comments submitted by others disputing the notion that SNCR use would affect fly ash sales, we have investigated and analyzed this issue further. As part of our effort, we have contracted with EC/R, an engineering consulting firm, which in turn engaged Dr. James Staudt of Andover Technology Partners (ATP), who has expertise regarding the issue of ammonia in fly ash.[31]

Dr. Staudt recently presented a paper at the AWMA, EPA, EPRI, DOE Combined Power Plant Air Pollution Control ''Mega'' Symposium, August 30–September 2, 2010, Baltimore, Maryland, which reviewed the performance benefits in terms of ammonia slip, reagent consumption, and fly ash ammonia that is possible through optimization of SNCR operation using the information from continuous and real-time monitoring of ammonia slip.[32] As explained more fully below, current technology has made it possible to control ammonia slip from SNCR to levels similar to what is achievable with SCR, in the range of 2 ppm or less. It is widely accepted that ammonia at this level does not impact the potential sales and use of fly ash in concrete.

One type of continuous ammonia slip analyzer works on the principle of tunable diode laser spectroscopy and provides continuous, real-time indications of ammonia slip in the duct. This type of analyzer facilitates optimum operation of the SNCR system and minimizes ammonia slip.[33] In other words, GRE would not incur costs for lost sales of fly ash or additional ash disposal if it employed such a system at CCS.[34]

For these reasons, we conclude that charges for lost fly ash sales should not be applied to the SNCR system cost analysis and that SNCR can be successfully deployed at the CCS plant at a cost effectiveness level well below the estimate in our proposal of $2,500/ton of NO_X removed.[35]

Comment: Commenter stated the addition of SNCR will have a negative impact on the marketability, value, and perception of CCR's fly ash. The commenter further stated that increased levels of ammonia in the fly ash with SNCR create offensive odors, are potentially dangerous to human health, and can pose an explosion risk. Commenter cited EPA's Control Cost Manual to bolster this position. Commenter stated that ammonia slip of only 5 ppm, generally accepted as the minimum that can be achieved with SNCR, can render fly ash unmarketable.

Response: EPRI performed a study in 2007 that examined the effects of ammonia slip from SCR systems and reached the conclusion that ''The survey overwhelmingly indicated that ammonia contamination is not impacting the ability of plants to sell ash.'' [36] Therefore, if an SNCR system were to achieve similar ammonia slip levels as SCR systems, then an adverse impact on fly ash marketability would not be expected.

Commenter's assertion that 5 ppm is the minimum that can be achieved with SNCR is not consistent with experience with recently installed, state-of-the-art, SNCR systems. As noted above, recently installed SNCR systems are capable of ammonia slip levels in the range of 2 ppm, and experience at the CP Crane Station in Baltimore, Maryland demonstrates that ammonia slip can be maintained below 2 ppm while also ensuring that high ammonia slip excursions during load changes and other transients are avoided.[37]

In some cases the testimonials [38] provided by GRE regarding the adverse effects of ammonia are highly questionable. As an example, one of the testimonials from a Mr. Boggs incorrectly cautions about the explosiveness of ammonia—

> ''I would point out that with the storage dome at Coal Creek, the ammonia levels that could accumulate would be extremely hazardous. A little know (sic) fact is that ammonia is an explosive gas at certain levels when it accumulates with air present''.

On the other hand, according to the North Dakota State University,

> ''Anhydrous ammonia is generally not considered to be a flammable hazardous product because its temperature of ignition is greater than 1,560 degrees F and the ammonia/air mixture must be 16 percent to 25 percent ammonia vapor for ignition.'' [39]

Although, in principle, ammonia can be combustible under special conditions, these are conditions that are highly unlikely to result from ammonia in fly ash—even if fly ash ammonia concentrations were to reach several hundred ppm. In fact, to our knowledge, there has never been a fire or explosion resulting from ammonia in fly ash.

In summary, GRE's comments and testimonials generally overstate the real concerns regarding ammonia that may result in the fly ash of a plant equipped with SNCR.

Comment: Commenter stated that the social, economic and environmental benefits from re-using ash are not outweighed by costs nor are they outweighed by the imperceptible improvements to visibility.

Response: As stated above, EPA anticipates that application of SNCR at

[31] Information regarding EC/R and Dr. Staudt's credentials is available in the docket.

[32] Staudt, J., Hoover, B., Trautner, P., McCool, S., and Frey, J., ''Optimization of Constellation Energy's SNCR System at Crane Units 1 and 2 Using Continuous Ammonia Measurement,'' AWMA, EPA, EPRI, DOE Combined Power Plant Air Pollution Control ''Mega'' Symposium, August 30–September 2, 2010, Baltimore, MD.

[33] Id.

[34] EC/R also received input directly from Fuel Tech that its SNCR systems are fully capable of being operated so as to avoid detrimental ammonia levels in the fly ash.

[35] Even should some portion of the CCS fly ash be affected by greater levels of ammonia, which we find unlikely, we conclude that ammonia slip mitigation (ASM) technology or another technology could be utilized to address or mitigate ammonia in the fly ash. Dr. Ron Sahu, in comments on our proposal, mentions three possible systems that could be used, and our consultants are aware of no technical reasons that ASM technology would not be effective to mitigate ammonia on fly ash from lignite.

[36] *http://my.epri.com/portal/server.pt?Abstract_id=000000000001014269.*

[37] Staudt, J., Hoover, B., Trautner, P., McCool, S., and Frey, J., ''Optimization of Constellation Energy's SNCR System at Crane Units 1 and 2 Using Continuous Ammonia Measurement,'' AWMA, EPA, EPRI, DOE Combined Power Plant Air Pollution Control ''Mega'' Symposium, August 30–September 2, 2010, Baltimore, MD.

[38] EPA–R08–OAR–2010–0406–0077, Letter from GRE to NDDH, February 9, 2010.

[39] *http://www.ag.ndsu.edu/pubs/ageng/safety/ae1149-1.htm.*

CCS would not decrease the amount of ash re-use. Our FIP is based on a reasonable consideration of the five BART factors: Costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. We understand that GRE may have reached a different result based on its consideration of the statutory factors and other factors; that does not mean our determination is unreasonable.

Comment: Commenter asserted that changes to the quantity of fly ash marketed and sold will have a direct impact on fly ash management costs, as the revenue currently used to offset fly ash management will be lost. The lost fly ash sales revenue is based on the 2010 average price per ton FOB of $41.00; with 30% of the sale price going to GRE as revenue.

Response: As stated above, we do not agree that fly ash sales would be impacted. If there were any lost revenue, the lost revenue to GRE is the only cost that should be considered, not the full FOB price which includes revenues to others. This cost was $5/ton prior to December 2011 [40] as presented by GRE in its comments. Were it still relevant, we would consider this a reasonable price to use. In addition, we would consider $5/ton to be a reasonable cost to GRE for ash disposal, resulting in a total cost to GRE of $10/ton.[41] URS increased the ash sales price to $12.30 in the refined analysis based on GRE's 2012 ash sales contract price. We are not convinced that such an increase would be appropriate. GRE did not provide any detail on the basis for the increased price. Considering this is a 2012 contract price, it may even be based on projected information. It was reasonable for us to rely on the best estimates at the time of our proposal. We note that GRE itself supplied these estimates.

Comment: Commenter stated that EPA's Control Cost Manual (2002) does not allow GRE to include in the BART analysis the value of previously purchased assets that would be rendered useless by the elimination or reduction of fly ash sales. GRE claims $31 million has been invested on ash storage, transportation and distribution infrastructure along with their strategic partner Headwaters Resources. Of the $31 million, GRE has contributed $7 million.

Response: Given the availability of means to control ammonia levels in the fly ash, we do not agree that previously purchased storage, transportation, and distribution infrastructure would be rendered useless. However, the commenter is correct that the Control Cost Manual does not consider the costs of existing infrastructure that would be rendered useless as a result of installing new or retrofit controls. The Control Cost Manual is designed to provide methods for estimating the specific costs of installation and operation of control technologies to allow consistent comparison of such costs across multiple sources; thus, the ''stranded'' costs for existing infrastructure are not accounted for in the cost estimation methodology found in the Control Cost Manual.

Comment: Commenter asserted that even with a cost effective ASM technology installed, there will be times when the residual ammonia levels in the ash are too high to treat. Ammonia injection rates will vary during periods of startup and shutdown, in addition to variable load operation, in order to maintain compliance with the BART limits. The commenter stated that variable ammonia injection rates and associated changes in ash concentrations will result in frequent testing and periodic rejection of ash requiring on-site disposal. The commenter further stated that variable ammoniated ash levels will put GRE's generated ash in a very vulnerable position with respect to competitors in the fly ash marketplace, reducing ash sales and increasing on-site disposal.

Response: Testimonials provided by GRE cited older SNCR systems, such as Eastlake Station in Eastlake, Ohio, as causing problems for fly ash marketability. (The testimonials also reaffirmed that fly ash from boilers with SCR systems remained marketable.) The Eastlake SNCR system was installed several years ago, and current state-of-the-art SNCR systems have been demonstrated to control ammonia slip to avoid high ammonia slip transients, as described by Staudt, *et al.*[42] Ammonia slip can be consistently maintained at low levels in the range of 2 ppm or less over a wide range of loads for load following units, and this was demonstrated at the two units at CP Crane Station near Baltimore. The control system was optimized expressly to minimize the effects of ammonia on plant fly ash. This was made possible by utilizing permanently installed ammonia monitoring devices. Both units needed to maintain slip at low levels while making several rapid load changes a day. CP Crane Station has continued to control the SNCR system in this manner. As described in the referenced paper, the accuracy of the continuous ammonia instruments were shown to be comparable to wet chemistry measurements at these low levels of ammonia slip and the instruments have had good reliability.

Another aspect of ammonia slip and impact on fly ash marketability is that the alkalinity of the fly ash will impact how much ammonia becomes attracted to the fly ash. Fly ash from bituminous coals, with more sulfur trioxide, will tend to attract more ammonia than fly ash with a high alkalinity, such as fly ash from North Dakota lignite. As a result, ammonia deposition on fly ash at CCS is likely to be less of an issue than it would be on a bituminous coal unit, such as Eastlake, and higher ammonia slip levels may be tolerable before fly ash marketability is affected.[43]

Comment: Commenter stated that, to GRE's knowledge, no lignite-fired unit is currently operating SNCR and ASM technology, and the vendor would not guarantee any level of performance for a lignite-fired unit.

Response: Evidence indicates that modern SNCR systems can achieve ammonia levels of 2 ppm or below, which would avoid the need for use of ASM technology.

Our review of EPA Title IV data for 2010 found that there are three tangentially fired coal-fired boilers that burn lignite coal and control emissions to under 0.14 lb/MMBtu with SNCR. These include Big Brown 1 and Monticello 1 and 2. According to the Fly Ash Resource Center, both the Big Brown Plant and the Monticello Plant market their fly ash through Boral Materials.[44] The Monticello fly ash was designated an approved material by the Arizona Department of Transportation (July 2011 [45]) and Georgia Department of

[40] Docket EPA–R08–OAR–2010–0406–0201, GRE comments, pdf p. 27.

[41] The American Coal Ash Association indicates that where ash is disposed near the power plant, a cost of $5/ton is reasonably expected.

[42] Staudt, J., Hoover, B., Trautner, P., McCool, S., and Frey, J., ''Optimization of Constellation Energy's SNCR System at Crane Units 1 and 2 Using Continuous Ammonia Measurement''. AWMA, EPA, EPRI, DOE Combined Power Plant Air Pollution Control ''Mega'' Symposium, August 30–September 2, 2010, Baltimore, MD.

[43] This is supported by the Fly Ash Resource Center as stated on its Web site, ''Ashes that are basic in nature with very low sulfur content adsorbs much less ammonia than high sulfur Eastern bituminous coal ashes.'' *http://www.rmajko.com/qualitycontrol.htm.*

[44] *http://www.rmajko.com/suppliers1.html.*

[45] *http://www.azdot.gov/highways/materials/pdf/materials_source_list_flyash.pdf.*

Transportation (January 2012 [46]). According to Boral's Web site, the Big Brown ash has been designated an approved material by several state departments of transportation.[47] Both of these plants are selling their fly ash and are not experiencing adverse impacts with ammonia in the ash.

This is further evidence that GRE's assumption, that the CCS plant would be unable to market its fly ash, is unjustified. Also, as indicated above, if it were necessary to employ ammonia mitigation to the fly ash, we think at least one of the available systems could be employed at CCS.

Comment: Commenter stated that the BART analysis does not take into account the additional regional economic impacts resulting from the reduction of CCS ash sales. GRE uses the freight on board (FOB) price of the ash to estimate a loss to the local and regional economy from the elimination of ash sales of as much as $28.70/ton or $11,910,500 per year.

Response: As we have already discussed, we do not agree that ash sales would be reduced with the implementation of SNCR. Thus, there should be no regional economic impacts from lost fly ash sales. However, were this comment still relevant, we note two points. First, the BART Guidelines, which are mandatory for CCS, prescribe a method for estimating the specific costs of installation and operation of control technologies to allow consistent comparison of such costs across multiple sources. This method does not include consideration of regional economic impacts. If such impacts were to be considered, different methodologies and different notions of cost effectiveness would have to be developed. While we are sensitive to broader economic impacts, they are not part of our focused analysis of the BART factors in making a BART determination.

Second, if we were to consider such impacts, there is considerable uncertainty in the estimate GRE provided, which attempts to conduct a complex economic assessment based on FOB price alone. For example, the estimate does not consider the offsetting economic impact of replacement materials, such as alternative concrete admixtures, which would be used by concrete manufacturers as an alternative to CCS's ash.

Comment: Commenter stated that loss of ash sales at CCS would negatively impact the regional and national economy, as well as the regional and national infrastructure. The commenter stated that the beneficial use of fly ash is directly responsible for a large number of jobs throughout the country. The commenter highlighted the importance of fly ash as a component of road and bridge construction across the country, and cited a report by the American Road and Transportation Builders Association. According to GRE, the research in the report concluded that the elimination of fly ash as a construction material would increase the average annual cost of building roads, runways, and bridges in the United States by nearly $5.23 billion. This total includes $2.5 billion in materials price increases, $930 million in additional repair work and $1.8 billion in bridge work. The additional costs would total $104.6 billion over 20 years.

Response: For the reasons expressed in our response to the previous comment and in our other responses, we do not consider this comment relevant to our decisions. We have concluded that CCS's ash sales will remain feasible, and find that the impacts cited by GRE are impacts that would apply to the entire fly ash industry and not just CCS. Furthermore, there is not sufficient evidence that elimination of CCS's ash sales would result in any of the impacts described above.

Comment: Commenter stated that the use of fly ash as a replacement for cement has environmental benefits. Commenter asserted that as a result of the increased use of fly ash, less land is disturbed for quarrying raw materials, less land is taken out of production for landfills, and less carbon dioxide (CO_2) is emitted into the atmosphere to make cement. Commenter argued that there will be a 1 to 1 ton increase in CO_2 emissions from using more Portland cement in place of ash.

Response: As stated in previous responses, we do not agree that the use of SNCR will cause GRE to experience a reduction in fly ash sales. Furthermore, GRE presents no evidence to support its claims about CO_2 emissions or reduced quarrying. CO_2 emissions result from many factors, and additional quarrying might be avoided through use of alternative sources of fly ash. As did the State, we have already considered the potential need to landfill additional fly ash in our five factor analysis, but do not consider that a reason to reject SNCR as BART.

Comment: Commenter stated that the landfill cost estimate includes costs for the life of the disposal facility including engineering, design, and permitting; construction; and operations and maintenance, including closure and post-closure care.

Response: As we stated in previous responses, we are not convinced that the use of SNCR will impact GRE's ash sales; thus, requiring additional on-site landfill facilities should not be necessary. Furthermore, we have noted in prior responses that we find a disposal cost of $5/ton is reasonable in the improbable event that some ash would need to be disposed.

Comment: Commenter stated that the ash management costs used in this analysis assumes that future ash disposal facilities will be designed and constructed to meet RCRA subtitle D standards. Commenter asserted that this cost would increase considerably if EPA tightens standards as a result of the uniform national disposal standards currently being considered.

Response: As already discussed, we do not agree that SNCR will lead to increased landfilling. Were this comment still relevant, we note that we evaluate costs based on the best information available concerning current costs. We do not know what the final coal combustion residuals regulations will require with respect to RCRA subtitle D and we are not required to include speculative costs in our estimates.

e. CCS Visibility Improvements Are Minimal

Comment: Commenter stated that the refined analysis demonstrates that the installation of SNCR will not result in perceptible visibility improvements in North Dakota's Class I areas, and it is not justifiable for GRE to incur the added cost of SNCR without any appreciable improvement in visibility. To support these claims, the commenter stated that from GRE's BART analysis, it can be estimated that the incremental deciview improvements associated with the installation of SNCR would range from 0.109 to 0.207, which are well below what EPA has established as a perceptible level to the human eye (0.5 deciviews).

Response: There is considerable uncertainty in the deciview improvements calculated by GRE. GRE provides an analysis of the incremental modeled impacts and cost per deciview in Table 3.3.1 of GRE's November 2011 Refined Analysis, but provides no further explanation of the table or the values contained therein. A January 19, 2012 NDDH letter to CCS also raises concerns about certain aspects of the table pertaining to baseline emission rates and deciview improvement values. In addition, it appears that GRE has calculated these values based on new

[46] *http://www.dot.state.ga.us/doingbusiness/materials/qpl/documents/qpl30.pdf.*

[47] *http://www.boralna.com.*

assumptions, and EPA raises concerns about some of these assumptions (e.g., control efficiency of SNCR) in other comment responses within this document.

Even if the results were correct, as noted elsewhere in our response to comments, the RHR is clear that perceptibility of visibility improvement is not a test for the suitability of BART controls. Also, as noted elsewhere in our response to comments, we have not used the dollar-per-deciview metric and find that it is reasonable to evaluate control options on the basis of the cost effectiveness in dollar-per-ton removed in conjunction with the modeled visibility improvement.

Concerning our consideration of visibility improvement in the CCS BART determination, the BART Guidelines (40 CFR part 51, appendix Y) state that deciview improvements must be weighted among the five factors and the Guidelines provide flexibility in determining the weight and significance to be assigned to each factor. Thus, achieving a visibility improvement greater than the perceptible level of 0.5 deciviews is not a prerequisite for selecting a particular control option as BART at CCS.

Comment: Commenter stated that combined utility NO_X emissions in North Dakota represent approximately only 6% of total NO_X emissions, and therefore, it is understandable that proposed and additional BART NO_X reductions from North Dakota utilities do not provide more visibility improvements in the Class I areas.

Response: We disagree with the commenter's assertion that the potential visibility improvements from NO_X controls on North Dakota EGUs would be small. The commenter's estimate of the contribution from utilities to NO_X emissions in North Dakota appears to be incorrect. Emission inventories developed by the WRAP for the 2000–2004 planning period show that EGUs contributed 78,995 tons out of a total of 229,460 tons of NO_X for all source categories combined.[48] Therefore, utilities account for some 34.4% of the total NO_X emissions in North Dakota, and more than any other source category.

Furthermore, the RHR states that BART determinations are based on circumstances such as the distance of the source from a Class I area, the type and amount of pollutant at issue, and the availability and cost of controls (70 FR 39116). Thus, sources that are closer to Class I areas and emit the types of pollutants that contribute to regional haze are more likely to be subject to BART requirements, regardless of their percent contribution to the statewide NO_X emission rate.

Comment: Commenter (GRE) stated that ammonia is a listed state toxic in North Dakota, and is viewed as a contributor to regional haze because it can bond with SO_2 and NO_X to form ammonium sulfate and ammonium nitrate aerosols. Commenter further stated that additional ammonia slip from the proposed SNCR for CCS may offset the relatively minor NO_X reduction proposed by EPA.

Response: GRE does not provide the anticipated ammonia emissions for comparison to the proposed NO_X reductions and states that this issue is outside the scope of its analysis. In the RHR, EPA states that there are scientific data illustrating that ammonia in the atmosphere can be a precursor to the formation of particles such as ammonium sulfate and ammonium nitrate; however, it is less clear whether a reduction in ammonia emissions in a given location would result in a reduction in particles in the atmosphere and a concomitant improvement in visibility (70 FR 39114). The evaluation of whether ammonia slip would offset the proposed NO_X reductions to some degree cannot be calculated due to the lack of information provided by GRE, as well as the inherent uncertainty in estimating the effects of ammonia emissions on regional visibility.

Furthermore, as stated in our previous responses, ammonia slip, due to the incomplete reaction of the NO_X reducing agent, can be limited to low levels through proper design of the SNCR system. Design of the SNCR system can be optimized by taking into account the temperature, NO_X concentration, residence time, and reagent distribution. Our recent analysis indicates that ammonia slip levels can be reduced to below 2 ppm with the introduction of the latest monitoring technology. Therefore, we disagree that any potential ammonia release from SNCR at CCS may offset the proposed NO_X reductions.

Comment: Commenter stated that NO_X contributes to ammonium nitrate formation, which is predominantly a winter ''haze'' contributor, and for the purposes of valuing the welfare effects of recreational visibility, it is important to consider that the North Dakota national parks are generally not in high use during the winter season. Commenter expressed concern over paying an extreme price per deciview resulting in imperceptible improvements for a time of year when the parks are generally not used.

Response: We addressed this comment in our responses to modeling comments in section V.C.

f. Comments on Alternative NO_X Emission Limits

In our proposal, we asked for comments on a possible alternative NO_X BART limit for CCS 1 and 2, based on use of combustion controls alone, of 0.14 lb/MMBtu. This section presents the comment summaries and our responses related to this issue.

Comment: Commenter stated that because CCS cannot achieve the 30-day rolling average emission rate without installation of SNCR, it should not be considered as an appropriate BART emission level. Commenter stated that this is consistent with EPA's own determination that a presumptive BART emission level of 0.17 lb/MMBtu is cost-effective and will result in significant visibility improvement. Commenter stated that these comments and the associated Refined Analysis demonstrate that any additional NO_X reductions would neither be cost-effective nor would result in perceptible visibility improvement in Class I areas.

Response: EPA does not agree with the commenter's assertions. EPA disagrees with certain of GRE's assumptions in its Refined Analysis. Please refer to other comment responses throughout this document for details about each of these assumptions. We have reasonably considered the five BART factors and have arrived at a reasonable BART determination.

As to the presumptive limits, the BART Guidelines state that utility boilers should be required to meet the presumptive NO_X emission limits, unless it is determined that an alternative control level is justified based on consideration of the statutory factors. As noted elsewhere, our regulations require that a state or EPA must consider the five statutory BART factors in determining BART and cannot simply default to the presumptive limits. We have already explained why the State's consideration of the costs of compliance was fatally flawed and why we must disapprove the State's BART determination. In promulgating our FIP, we have reasonably considered the five factors and arrived at a reasonable BART determination that is more stringent than the presumptive BART limit.

Comment: Commenter stated that NO_X limits should be expressed on an annual rather than 30-day basis, to account for the full spectrum of operations such as variable load, and

[48] Source: *http://www.wrapair.org/forums/ssjf/pivot.html.*

startups or shutdowns not accounted for in emission limits based on vendor guarantees. The commenter notes that an emission limit of 0.14 lb/MMBtu was achieved for a period of time, but it is not sustainable on a 30-day rolling average basis. Commenter cited attachment 1, GRE's operational history, as a rationale.

Response: The BART Guidelines require specification of a 30-day rolling average limit for EGUs; therefore, all averaging times in the proposed FIP have been stated on a 30-day rolling average basis, including necessary upward adjustments from annual emission rates to account for potential variations in emissions on a 30-day basis. For the reasons stated elsewhere, we have not changed our determination that SNCR plus SOFA plus LNB is BART, but we have changed the NO_X BART limit for CCS 1 and 2 to 0.13 lb/MMBtu on a 30-day rolling average basis.

Comment: Commenter argued that the NO_X emission limits proposed in the original BART evaluation for Units 1 and 2 did not consider that the units would experience significant load variability. Commenter stated that in September 2011, GRE increased the cycling range of CCS in response to market conditions, which caused significant load swinging and impacts to NO_X control performance. Commenter further stated that load variability is expected to continue as an operational scenario for Units 1 and 2 for the foreseeable future, and therefore any emission limit must account for this additional variability in emissions. The commenter asserted that the presumptive emission rate of 0.17 lb/MMBtu is achievable, including load variability.

Response: The 0.13 lb/MMBtu limit we have selected provides a reasonable margin for compliance, not only for load variability, but also for startup and shutdown conditions. The emission limit we have set also takes into consideration the control efficiency that can be achieved with SNCR. We have provided further discussion on this in previous responses.

Comment: Commenter stated that reducing NO_X to the absolute limits of LNC3 and DryFining™ leads to collateral damage to the CCS boilers. Specifically, GRE claims that installation of the second generation LNC3 technology in 2008 on Unit 2 contributed to circumferential cracking on the boiler tubes between the burner front and the over-fired air registers, as operators attempted to maintain low NO_X emission rates. GRE further stated that the 2010 implementation of DryFining™ technology with LNC3 accelerated tube leaks at CCS 2, causing unplanned outages. The commenter asserted that while it has been possible to operate at lower NO_X emission rates during ideal conditions, the risk of circumferential cracking increases significantly when operating at these lower rates. The commenter concluded that an emission rate between 0.14 and 0.17 lb/MMBtu for LNC3 and DryFining™ is not consistently achievable as a 30-day rolling emission limit; and the commenter firmly believes that 0.17 lb/MMBtu is the most stringent level.

Response: We have decided to finalize our proposal that SNCR + SOFA + LNB is BART. We note that using SNCR would alleviate GRE's concerns about circumferential cracking from use of LNC3 and DryFining™ while also helping to maintain NO_X emissions during periods of load variability. We provide additional responses pertaining to emission limits in this section.

Comment: Commenter stated that from a review of EPA modeling information from the Cross-State Air Pollution Rule (CSAPR) docket,[49] there are currently no tangentially-fired utility EGUs, in the CSAPR-affected states, with LNC3 combustion controls and SNCR post-combustion controls that operate at or below the presumptive BART limit of 0.17 lb/MMBtu for NO_X. The commenter further stated that none of the facilities included in the CSAPR database operate at or below the proposed FIP limit of 0.12 lb/MMBtu.

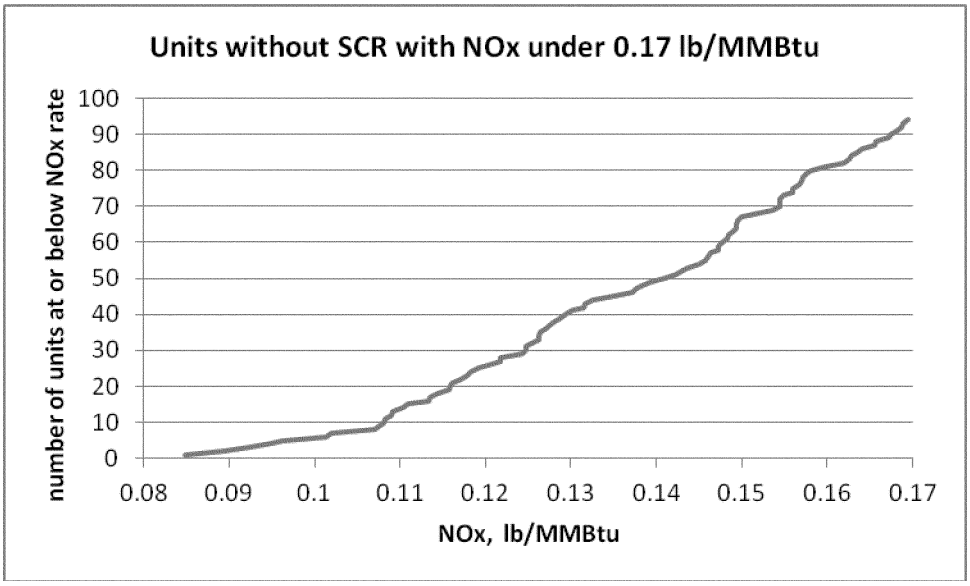
Response: The proposed 0.12 lb/MMBtu emission rate was based on the information that GRE itself supplied to North Dakota in 2007, and which North Dakota evaluated in its BART determination. Starting from baseline emission rates from 2000 to 2004 and the 50% SNCR control efficiency that GRE estimated, North Dakota arrived at an average annual emission rate of 0.108 lb/MMBtu. We adjusted this to 0.12 lb/MMBtu to arrive at a proposed 30-day rolling average emission limit.

Our analysis focuses on what is achievable using SNCR at CCS, based on the Control Cost Manual, vendor information (Fuel-Tech), the State's analysis, GRE's analysis, and our own analysis and expertise.

Analysis of emissions data found significant discrepancies in Figures 2.2 and 2.3 of GRE's November 2011 Refined Analysis. A review of EPA Title IV data for 2010 showed 94 coal-fired boilers that do not have SCR achieve annual emissions levels below 0.17 lb/MMBtu, with the median slightly under 0.14 lb/MMBtu (see Figure 1 below). Of these, ten of them are using SNCR in combination with combustion controls to achieve under 0.17 lb/MMBtu. See docket for a list of these facilities. Of these ten, three are supercritical tangentially-fired boilers that use lignite coal with emissions below 0.14 lb/MMBtu. These include Big Brown 1 and Monticello 1 and 2, as discussed earlier in our responses. In addition, the NEEDS Database v.4.10 for the Final Transport Rule in the CSAPR docket includes two tangentially-fired coal/steam units from North Carolina with LNC3 and SNCR that had emission rates of 0.159 lb/MMBtu and 0.164 lb/MMBtu.

[49] See *www.regulations.gov,* docket EPA–HQ–OAR–2009–0491.

Figure 1. Coal-Fired Boilers Operating Below 0.17 lb/MMBtu



As we explain elsewhere, we have decided to revise the BART limit from 0.12 lb/MMBtu to 0.13 lb/MMBtu on a 30-day rolling average.

Comment: Commenter stated that the 0.14 lb/MMBtu emission rate would only be achievable after installation of SNCR (and cannot be achieved by LNC3 alone), and SNCR is not cost-effective based on thresholds established by North Dakota and already approved by EPA.

Response: We are not aware of any cost effectiveness thresholds established by North Dakota and already approved by EPA. In making a BART determination, cost-effectiveness is one factor that must be taken into account, but the relevance of a particular dollar-per-ton figure for controls will depend on consideration of the remaining statutory factors. As already explained, we disagree with a number of GRE's assumptions underlying its cost calculations and its assertion that SNCR is not cost-effective.

As noted in prior responses, we no longer agree that the use of SNCR at CCS would lead to a loss of fly ash sales. Accordingly, EPA has revised its cost analysis on a per unit basis and has determined that SNCR could be installed and operated at CCS for $1,313/ton. This value assumes no costs for lost fly ash sales and no additional fly ash disposal costs. This cost includes combustion control costs and the combined control efficiencies for SNCR and combustion controls. Our research indicates that the cost of up-front ammonia slip control systems would likely be included in the control package from current SNCR suppliers where the need to control ammonia slip is identified, so we have not included a separate cost for such a control system in our revised cost estimate; evidence indicates that if there were any incremental cost associated with such a control system, it would not significantly affect the overall cost effectiveness of the controls.[50] We used a total capital investment for SNCR of $6.92 million ($10/kW [51]) that we derived from the company's July 15, 2011 submittal.[52] As explained more fully in a subsequent response, we find that URS's November 2011 analysis for GRE overestimates the capital costs for SNCR, among other things, by including a retrofit factor when none is warranted. Nonetheless, even if we use URS's inflated estimate of $11.80 million ($21/kW) for the total capital investment of SNCR, the resultant cost effectiveness value would be $1,524/ton.[53] Both the $1,313 per ton and $1,524 per ton values are well within the range of values that EPA and states other than North Dakota have considered reasonable for BART, and that North Dakota itself considered reasonable for BART at other North Dakota sources. (76 FR 58623).

Comment: Commenter stated that only supercritical boilers have shown the capability to achieve less than 0.14 lb/MMBtu, using SNCR and LNBs. Commenter further stated that, because CCS does not have any supercritical boilers and there are no other examples of a tangential fired source with only LNBs, it is unrealistic to expect any CCS unit to attain an annual average of 0.14 lb/MMBtu, and even more unrealistic to obtain this average on a 30-day rolling basis, using LNB alone.

Response: Based on our evaluation of data from CCS 2, we have decided that combustion controls alone may not be able to achieve a 30-day rolling average limit of 0.14 lb/MMBtu at CCS on a consistent basis. However, we have decided to finalize our determination that SNCR plus SOFA plus LNB is BART and are promulgating a limit of 0.13 lb/MMBtu on a 30-day rolling average basis.

We note that GRE claimed in its refined analysis that data on supercritical units does not provide an indication of SNCR performance at CCS because CCS does not have supercritical units. Supercritical units typically operate at higher furnace temperatures than subcritical units. The higher furnace temperature makes NO_X reduction with SNCR more difficult due to the competing urea oxidation reaction that causes NO_X reduction to drop off at high temperatures. As a result, one would expect SNCR performance to

[50] This is based in part on, ''Measuring Ammonia Slip from Post Combustion NO_X Reduction Systems,'' James E. Staudt, Andover Technology Partners, ICAC Forum 2000.

[51] The $10/kW capital cost is within the range that industry sources find reasonable for typical SNCR utility installations. See Institute of Clean Air Companies, White Paper Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, February 2008, p. 7.

[52] We used the $3,627,729 direct capital cost provided by the company and adjusted this to 2009 dollars. We then used the cost factors in the Control Cost Manual.

[53] We have included our calculations in the docket.

generally be better at a subcritical unit than a supercritical unit—all other factors being equal.

g. Cost Effectiveness of SNCR and SCR at CCS

Comment: Commenter stated that, when combined, the new analyses provided by URS and Golder Associates confirm that SNCR is not cost-effective, consistent with EPA's presumptive NO_X analysis. These analyses essentially reaffirm GRE's initial determination that DryFining™ and LNC3 is BART for CCS.

Response: Our prior responses address the presumptive emission limits and alleged cost effectiveness thresholds. We disagree that GRE's consultants' analyses confirm that SNCR is not cost effective or reaffirm GRE's initial BART recommendation. As we have noted, our analysis indicates that SNCR plus LNC3 is more cost effective than we estimated in our proposal.

Comment: Commenter stated that only a site specific evaluation by a competent SNCR supplier (URS) should be used to estimate emission reductions and associated costs. The URS refined analysis is provided in Appendix B of the GRE document. URS is a preeminent engineering consultant in SNCR technology, having designed several dozen SNCR pollution control systems throughout the world. This experience qualifies URS to make site-specific recommendations on SNCR design.

Response: EPA agrees that an evaluation by a competent SNCR supplier may be beneficial but notes that GRE has only now brought its ''refined analysis'' forward. GRE found it sufficient to supply several cost estimates to the State without such assistance. Regardless, URS is not an SNCR technology supplier. While URS is an engineering firm, it is not a supplier or developer of SNCR technology. As indicated in the experience list provided by URS, URS's role in these SNCR projects was primarily as constructor, performing a feasibility study, engineering, or procurement. In no cases was URS actually the process supplier—the company that actually designed the process and made the performance predictions and guarantees. See docket. Depending upon the project shown in the list provided by URS, its role may have been associated with managing project construction activities, engineering and location of equipment such as piping, tanks, etc., and in some cases simply ''feasibility studies,'' but in none of the cases it cites did URS actually design the SNCR process and develop performance guarantees.

While location of tanks, routing of process piping and other engineering or construction activities are important aspects of a project, they do not determine the process performance. Critical aspects of SNCR process design, which determine performance (NO_X reduction, reagent use and ammonia slip), are design of and location of injectors in the furnace, specification of reagent type, flowrates and control logic. Process design is performed by companies such as Fuel Tech, having supplied many utility SNCR systems, or other companies. For example, some of the installations cited by URS in its experience list, such as TVA Johnsonville and PEPCO were supplied by Fuel Tech or Advanced Combustion Technology. As indicated in the table provided by URS, URS apparently had a role in the engineering of these projects (location of storage tanks, piping between components, etc.), but did not develop the process design or the performance estimates for the TVA or PEPCO installations. Other installations cited by URS (new boilers at AES Warrior Run and the two Air Products installations) were actually designed and supplied by the circulating fluid bed boiler suppliers, with performance and guarantees developed by the boiler supplier. The balance of the installations cited by URS were either feasibility studies, where no real process guarantees were made, or were actually supplied by other companies (Applied Utility Systems, ESA, or others). In fact, the study that URS has conducted for GRE on CCS is essentially a feasibility study. Aside from URS's experience, the analysis URS conducted does not support that the CCS units are so unique that Control Cost Manual estimates of SNCR performance and costs are irrelevant.

Thus, while URS has the expertise to provide useful input on the cost associated with installing some of the associated equipment, it is not in the business of providing SNCR process designs and performance guarantees—and it apparently did not do this on any of the projects on its experience list.

GRE argues that the CCS units are unique and thus require evaluation by an SNCR process supplier in lieu of an analysis based on the Control Cost Manual. However, GRE has not provided any information from companies that actually design SNCR systems and have experience providing performance guarantees, such as Fuel Tech or another company that is an experienced SNCR supplier. Thus, GRE's claims about SNCR performance are not supported.

The control efficiency of SNCR is the main issue raised by URS because it has a significant impact on the overall cost effectiveness of SNCR, as further explained later in our responses. URS also provides a cost estimate which is used to support GRE's own cost analysis. While GRE comments that ''only a site specific evaluation, by a competent SNCR supplier (URS), should be used to estimate emission reductions and associated costs,'' the evaluation provided by URS is based on data from other plants. URS extrapolates the SNCR control efficiency using CCS data from a plot of control efficiency versus inlet NO_X concentrations for 55 existing SNCR installations. This differs from the Control Cost Manual, which plots control efficiency as a function of boiler size. Neither is a definitive ''site specific'' measure of estimating control efficiency. Furthermore, there are many other factors besides inlet NO_X concentration that affect the efficiency of an SNCR system. Thus, GRE has provided little support for reducing the SNCR control efficiency by 20 to 30 percentage points from the efficiency used in the proposed FIP and from what they themselves originally estimated (*i.e.,* from 50% down to 30% or 20%).

Since GRE has not provided any information from companies that actually design SNCR systems and have experience providing performance guarantees, GRE's claims, that its prior representations about SNCR performance should be disregarded, are not supported.

Comment: Commenter states that EPA's analysis contains faults that, when corrected, lead to the conclusion that SCR, not SNCR, is BART for the CCS units. The faults include, first, that the EPA analysis of $4,116/ton is, on its own, cost effective and close to the cost effectiveness value North Dakota and EPA accepted at Stanton Station Unit 1 of $3,778/ton. Second, EPA retains the 80% control efficiency for SCR from the State's BART determination when, elsewhere in the proposal, EPA acknowledges that SCR is capable of 90% control. The commenter adjusted the cost effectiveness value to $3,595 based on 90% control efficiency which, the commenter states, is cost effective and below the Stanton Station Unit 1 cost effectiveness previously mentioned. Third, EPA retained costs related to loss of sales from fly ash disposal in the SCR cost analysis, which is perhaps in error as there is no reason a well-designed SCR, particularly in the low dust or tail end configuration, would impact ash sales. SCRs can meet 2 ppm ammonia slip, and at that level the ammonia in the ash is typically acceptable for all

uses. Additionally, mitigation of ammonia in ash is feasible, and is probably a less costly option if ammonia is, improbably, an issue.

Response: We disagree with the comment regarding the control efficiency of SCR at CCS. We have determined that the 0.043 lb/MMBtu emission rate that North Dakota used in its cost analysis based on the 80% control efficiency was acceptable and probably the best performance achievable with SCR technology taking into consideration the existing combustion controls. Based on our own investigation, as discussed in our responses to GRE's comments discussed above, we agree with the commenter on the issue of fly ash and have revised our cost analysis. We have removed the lost fly ash sales and fly ash disposal costs. We further agree that ammonia levels in the ash will not be problematic and are not including ammonia mitigation costs in our analysis. Our revised analysis relies on the $280/kW installed capital cost that we discussed in our proposal. We used the $280/kW capital cost in lieu of the $110/kW figure that is derived from GRE's capital cost analysis. As we stated in our proposal, $110/kW is unreasonably low compared to actual industry experience. Based on these changes, we calculate a cost effectiveness value for LDSCR + ASOFA + LNB at CCS of $5,603/ton of NO_X removed. We find that this cost is excessive in light of the predicted visibility improvement. Thus, we are not changing our determination that SNCR+ASOFA+LNB is NO_X BART at CCS 1 and 2.

Comment: Commenter stated that the furnace boxes for CCS 1 and 2 are unique, as required by the high moisture content of Fort Union lignite. Commenter stated that the firebox is larger than other lower-moisture coal-fired units, resulting in a higher cost of NO_X combustion controls. Specifically, the commenter stated that the greater air flow distance through the furnace requires increased size and type of wall nozzles and increased staging complexity; and an advanced air combustion system added to a larger firebox requires additional wall openings and redesign to wall water tubes, further increasing costs.

Response: All electric utility boilers are built to the owner's specifications and are, therefore, unique. However, the information presented by the commenter has not convinced us that the CCS boilers are so unique that our costing assumptions or our overall cost estimates are unreasonable. The fuel burned at CCS is very low BTU fuel, which contributes to the large furnace size. Therefore, it is possible that a combustion retrofit for CCS might be somewhat higher in cost than for a similar retrofit for a boiler of similar output firing a higher Btu coal.

Examination of Title IV data shows several lignite fired boilers with significantly lower emissions than at CCS—some using only combustion controls and some using combustion controls in combination with SNCR.

The application of SNCR on low-BTU fuel utility boilers goes back to the late 1980's when it was successfully applied to German brown coal boilers.[54] The larger furnace volume of a lignite or other low-Btu furnace actually provides more time for the SNCR reaction to occur, which should be beneficial for mixing and the SNCR reaction. The advantage will likely be improved reagent utilization.

Comment: Commenter stated that the larger registers installed at CCS 2 further reduce NO_X emissions as they allow for increased primary air which is available after installation of DryFining™, and that larger registers are tentatively anticipated to be installed at CCS 1 in 2014.

Response: We evaluate potential control options based on baseline conditions, not on ongoing revisions to a facility after the baseline period. It is not reasonable to consider controls installed after the baseline period in determining BART. Such an approach would tend to lead to higher cost effectiveness values for more effective controls and encourage sources to voluntarily install lesser controls to avoid installing more effective BART controls later.

Comment: Commenter stated that URS reviewed and updated both capital and operating costs for SNCR, based on their expertise and site specific investigation. These values were relatively consistent with values presented to EPA in June and July 2011, but are somewhat higher than the screening values presented in the original BART analysis.

Response: The higher cost-effectiveness ($/ton) of SNCR in GRE's November 2011 submittal can be primarily attributed to the lower control efficiency value assigned to the technology. The July 2011 study estimates a control efficiency of 50% for SNCR, which yields a cost effectiveness value of $3,198/ton for both Units 1 and Units 2 (one estimate). The November 2011 study estimates an SNCR control efficiency of 25% for Unit 1 and 20% for Unit 2, which yields a cost effectiveness value of $7,629/ton and $10,506/ton for Units 1 and 2 respectively.

It should be noted that the November study actually estimates lower capital and annual costs of control, each of which would independently lower the cost effectiveness value. The total capital investment for SNCR estimated in the July study was $12.72 million, compared to $12.18 million and $11.80 million for Units 1 and 2, respectively, in the November study. The annualized capital plus operating costs in the July study were estimated at $8.91million, compared to $8.79 million and $8.12 million for Units 1 and 2 in the November study. One of the main reasons that costs are higher in the July study is maintenance costs; the annual maintenance costs in the July study are $1,907,375 compared to approximately $180,000 for each Unit in the November study.

The baseline emission rate is another factor which would result in higher cost effectiveness values in the November study. The baseline emission rate in the July study was estimated at 0.22 lb/MMBtu, compared to 0.20 lb/MMBtu and 0.153 lb/MMBtu for Units 1 and 2 in the November study. A lower emission rate would result in less emissions controlled and a higher cost effectiveness value.

The lower SNCR control efficiency in the November study results in less NO_X controlled (*i.e.,* 1,152 tons per year (tpy) for Unit 1 and 772 tpy for Unit 2 in the November study versus 2,786 tpy NO_X controlled in the July study), and a higher overall cost effectiveness value. The reduced SNCR control efficiency outweighs the changes to the cost of control, which would otherwise result in lower cost effectiveness values.[55]

[54] Hofmann, J.W., von Bergmann, J., Bokenbrink, D., Hein, K. ''NO_X Control in a Brown Coal-Fired Utility Boiler.'' Presented at the EPRI/EPA Symposium on Stationary Combustion NO_X Control, San Francisco, CA, March 8, 1989.

[55] Our analysis differs in that we considered SNCR combined with combustion controls.

TABLE 1—COMPARISON BETWEEN COST EFFECTIVENESS FACTORS IN GRE'S JULY AND NOVEMBER 2011 COST ESTIMATES FOR CCS

Study description	Baseline emission rate (lb/MMBtu)	Control efficiency	Emission reduction (ton/yr)	Installed capital cost (MM$/yr)	Annual O&M cost (MM$/yr)	Pollution control cost ($/ton)
SNCR, July Study, Both Units	0.22	50	2,786	12.72	8.91	3,198
SNCR, November Study, Unit 1	0.2	25	1,152.8	12.18	8.79	7,629
SNCR, November Study, Unit 2	0.153	20	772.5	11.8	8.12	10,506

We do not agree with the capital and operating costs estimated by GRE. First, URS has inappropriately applied a retrofit factor when calculating capital costs for the SNCR system. The Control Cost Manual states:

The costing algorithms in this report are based on retrofit applications of SNCR to existing coal-fired, dry bottom, wall-fired and tangential, balanced draft boilers. There is little difference between the cost of SNCR retrofit of an existing boiler and SNCR installation on a new boiler.[56] Therefore, the cost estimating procedure is suitable for retrofit or new boiler applications of SNCR on all types of coal-fired electric utilities and large industrial boilers.[57]

Therefore, retrofit costs are inherent in the costs provided by the Control Cost Manual method and there is no need to introduce a retrofit factor. In using a retrofit factor of 1.6, URS overestimated capital costs by 60%.[58]

Another concern we have is that URS's estimate of reagent usage is high. The following is an examination of the 0.20 lb/MMBtu inlet level with 25% reduction case in URS's Table 4.[59] Using a boiler rating of 5900 MMBtu/hr,[60] an initial NO_X level of 0.20 lb/MMBtu, and a normal stoichiometric ratio (NSR) of 1.0 (30 lb urea/46 lb NO_2),[61] the hourly usage of reagent is: 5900 MMBtu/hr * 0.20 lbNO_2/MMBtu * (30 lb urea/46 lb NO_2) = 770 lb/hr.

This is roughly half of what URS calculated as the urea usage. In all of the cases URS estimated, the result is high. Since URS appears to have overestimated the reagent cost, it is likely that URS overestimated the water cost as well.

In this case, with urea at $500/ton delivered, the reagent portion of cost would be:

$500/ton * (1 ton/2000 lb)* 770lb/hr = $192/hr.

The tons removed per hour would equal:

(5900 MMBtu/hr)*(0.20 lb NO_2/MMBtu)*(0.25 reduction)*(1 ton/2000 lb) = 0.148 ton/hr.

The reagent portion of cost is 192/0.148 = $1,300/ton of NO_X removed.

This $/ton for reagent would be the same assuming the same cost per ton of urea and the same chemical utilization (25%, or 25% reduction at an NSR = 1.0).

The errors in the URS estimate are carried through to GRE's estimates.

Comment: Commenter stated that with the installation of LNC3, LNC3+, and DryFining™;, CCS's NO_X emissions are greatly reduced with respect to ''baseline'' values previously provided; and it is necessary to update the baseline emissions for Units 1 and 2 for this technology evaluation in order to reflect current conditions and unit performance. Commenter stated that the revised baseline emissions for Units 1 and 2 should be adjusted to 0.201 lb/MMBtu and 0.153 lb/MMBtu, respectively. The commenter stated that the use of DryFining™ technology has already been implemented for use at both units at a cost of $270 million, and GRE has made a significant investment to achieve multi-pollutant emission reductions and visibility improvements in the region.

Response: As stated in our previous comments, we reject GRE's revised baseline. We evaluate potential control options based on baseline conditions, not on ongoing voluntary revisions to a facility after the baseline period. It is not reasonable to consider voluntary controls installed after the baseline period in determining BART. Such an approach would tend to lead to higher cost effectiveness values for more effective controls and encourage sources to voluntarily install lesser controls to avoid more effective BART controls later.

Comment: The refined economic impacts analysis provided by GRE confirms GRE's original conclusion that SNCR is not a cost effective NO_X control option.

Response: We disagree with the cost effectiveness analysis provided by GRE in the refined analysis. We disagree with the control efficiency used for SNCR in combination with SOFA plus LNB used in the refined analysis, the assumed baseline and controlled emission rates, and the assumed reduction in ash sales. These issues are further discussed in the comment responses specific to each issue.

h. CCS General Comments

Comment: The commenter stated that at the time of this submittal, GRE has already installed LNC3 combustion controls at Unit 2. In 2011 dollars, this was at a cost of over $6 million and has already resulted in NO_X reductions. The same system is tentatively scheduled to be installed on Unit 1 during the 2014 outage.

Response: As stated in our previous comments, we reject GRE's use of a revised baseline.

3. Stanton Station Unit 1

Comment: Commenter states that the BART limits for the Stanton Station are contrary to BART requirements. Commenter states that both SO_2 and NO_X emission rates would decrease if only Powder River Basin (PRB) coal were allowed to be burned, because the burning of North Dakota lignite coal creates higher emissions of both pollutants. Commenter also states that EPA's cited 7th Circuit Court of Appeal decision (76 FR 58589) would not apply to such a requirement because that decision only applies to the redesign of a source.

Response: We do not interpret the CAA or the regional haze regulations as

[56] Rini, M.J., J.A. Nicholson, and M.B. Cohen. Evaluating the SNCR Process for Tangentially-Fired Boilers. Presented at the 1993 Joint Symposium on Stationary Combustion NO_X Control, Bal Harbor, Florida. May 24–27, 1993.

[57] Control Cost Manual, Section 4.2, p. 1–4.

[58] It appears that URS overestimated capital costs in other ways as well. Consistent with the BART Guidelines, and as outlined in our proposal and in this action, we have applied the factors permitted by EPA's Control Cost Manual to GRE's estimate of direct capital equipment costs for SNCR to arrive at a reasonable estimate of the total capital investment. We do not agree with URS's estimate of total capital investment because it relies on factors that are inconsistent with the Control Cost Manual.

[59] URS did not analyze a case with the parameters we have determined are most reasonable; we are providing the reagent cost review of one of URS's cases to highlight our concerns with the methodology. Considering an inlet emission rate of 0.15 lb/MMBtu and a 25% reduction, the parameters we find are reasonable, the reagent cost would be $1,304/ton using a similar analysis.

[60] EPA and the North Dakota SIP assume 6,112 MMBtu/hr, but URS assumes 5,900 MMBtu/hr. The difference will not affect the conclusion that URS's reagent costs are high.

requiring states to consider limiting the type of coal burned as a BART control technology. We note that we did not cite the referenced 7th Circuit decision in support of our proposal to approve the BART limits for Stanton Station.

Comment: One commenter states that EPA is proposing to approve SNCR + OFA + LNB as NO_X controls for Stanton Station Unit 1. While the commenter supports the use of further NO_X controls at this facility, the commenter asks EPA to further evaluate the cost estimates for SCR at this facility. According to the commenter, the cost estimates for SCR that EPA relied on in its proposal appear to include, at a minimum, costs associated with allowance for funds used during construction (AFUDC), which is not appropriate under the BART Guidelines and Control Cost Manual. Further, the underlying calculations in Stanton Station's BART submission to North Dakota do not clearly support the resulting cost.

Response: We relied on cost estimates submitted by North Dakota in our evaluation of the cost effectiveness of NO_X control options for Stanton Station Unit 1. In turn, North Dakota relied on costs taken from GRE's BART analysis as found in Appendix C.2 to the SIP. GRE asserts that these costs were derived ''using the procedures found in the EPA Air Pollution Control Cost Manual.'' [62] However, as suggested by the commenter, there are irregularities in how GRE applied the SCR cost methods in the Control Cost Manual. In particular, GRE included a line item for AFUDC in the amount of $8,232,000. However, closer examination reveals that this line item represents the cost of replacement power associated with a purported 10 week outage for installation of the SCR, and does not represent allowance for funds used during construction. Regardless, elimination of this line item would only lower the cost effectiveness values for SCR when burning lignite and PRB coal from $6,475/ton to $6,118/ton and $8,163/ton to $7,713/ton, respectively. In addition, the total capital investment stated by GRE for SCR of $55,279,000 equates to $294/kilowatt (kW). We find this cost consistent with the installed SCR retrofit costs, ranging from $79/kW to $316/kW (2010 dollars), cited in recent industry studies.[63] We expect that the cost at Stanton Station Unit 1 would be at the higher end of this range given its relatively low generation capacity of 188 MW. Accordingly, while we agree that there are questions regarding the underlying calculations, it is our opinion that further evaluating costs would not change the outcome of the BART determination.

4. Leland Olds Station Unit 1

Comment: Commenter stated that SCR, not SNCR, is BART at LOS 1. Commenter further stated that EPA assumed that Basin Electric overestimated the costs for SCR at this unit, but did not re-estimate the costs. Commenter analyzed the costs based on the revised cost for SCR at Unit 2, and considers its lower cost estimate ''well within the range of values determined to be cost effective in similar regulatory proceedings.''

Response: We have included in the docket for our final action an SCR cost estimate for LOS 1 that was based on methods similar to those we used for our SNCR cost analyses for MRYS 1 and 2 and LOS 2. The analysis was not an exhaustive effort but was used as a check of the analysis provided by North Dakota. Our analysis found the cost of SCR + SOFA would be approximately $5,132/ton of NO_X emissions removed with an incremental cost effectiveness between the SCR and SNCR control options of $8,845/ton of NO_X emissions removed. The cost estimates for SCR at LOS 1 that National Parks Conservation Association (NPCA) and the NPS provided in their comments reflect cost effectiveness values greater than $4,000/ton of NO_X emissions removed. While these various estimates are lower than those the State relied on, they are still high enough that we are not prepared to change our conclusion that the State's BART determination of SNCR + Basic SOFA for LOS 1 was reasonable.

Comment: Commenter stated that there is no discussion why SNCR + Boosted SOFA was rejected as BART.

Response: In response to this comment, we reviewed the benefits of SNCR + Boosted SOFA over SNCR + Basic SOFA. We determined that the two combustion control options achieve very similar results and that the incremental cost of the Boosted SOFA option at $7,826/ton is excessive compared to the 92 tons of additional NO_X reductions, which we anticipate would provide a low visibility benefit.

F. General Comments on SO_2 and PM Pollution Controls

Comment: One commenter stated that North Dakota's BART analyses that EPA proposes to approve fail to include the most stringent level of control that is achievable using scrubber technology since scrubbers can achieve 99% control efficiency. Commenters also stated that, with regard to SO_2, EPA should require both the lb/MMBtu limit and the percent control efficiency limit to be met in order to meet BART, rather than require that either limit be met as EPA proposed. One commenter stated that if only the percent reduction limit is set, emissions will increase with the sulfur content of the fuel unless sulfur content is also limited. One commenter requested EPA set a numeric limit rather than percent reductions.

Response: We agree that the RHR requires states to consider the most stringent level of control. We also agree that, in most applications, wet or dry scrubbers can achieve greater emission reductions than those required by North Dakota. However, there is very limited data on the performance of wet or dry scrubbers at units firing lignite, such as those in North Dakota. In a 2007 BACT determination for two new lignite-fired boilers at Oak Grove Station in Texas, the Texas Commission on Environmental Quality established an SO_2 emission limit of 0.192 lb/MMBtu on a 30-day rolling average. Based on this, we find that the emission limits established by North Dakota are not unreasonable. Also, we would like to emphasize that three of the North Dakota units have existing controls for SO_2 and that the emission reductions that can be achieved with upgrades to these existing controls may not be as great as those that can be achieved by a new scrubber installation. Finally, on the point of allowing either a lb/MMBtu or a percent control efficiency limit, we typically prefer a single limit. However, the BART guidelines list the presumptive levels in units of lb/MMBtu or a percent reduction, and we cannot say that the State's approach is inconsistent with the guidelines. The State chose to take advantage of this point and specifically found that it was not appropriate to establish limits on a lb/MMBtu and percent reduction basis. This was in part to allow for the potential that higher sulfur coals might be burned in the future, in which case the State believed that the percent reduction basis would extend greater flexibility. Based on these factors and our consideration of all the circumstances involved, we find that the SO_2 emission limits established by North Dakota are not unreasonable and we are approving them.

Comment: Commenters stated that North Dakota did not consider upgrading ESPs to decrease PM emissions, as is required by the BART Guidelines.

[62] Coal Creek Station Units 1 and 2 Best Available Retrofit Technology Analysis, Revised December 12, 2007, p. 8.

[63] Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative, Leland Olds Station Unit 2, Final Report, March 2011, docket EPA–R08–OAR–2010–0406–0076, p. 8.

Response: As noted in our proposal, the ESPs already reduce emissions by 99% or greater. Where new wet or dry scrubbers or modifications to existing scrubbers will be installed, additional PM emission reductions, particularly of sulfuric acid mist, will be achieved. Moreover, as noted in North Dakota's SIP, the visibility improvement that can be achieved by further reducing PM is minor. For example, North Dakota's BART determination for M.R. Young Unit 2 shows that the highest visibility impact from PM in the baseline was 0.0165 deciviews (LWA, 2001). SIP, Appendix B.4, p. 26. Similarly, North Dakota's BART determination for Stanton Station Unit 1 shows that reducing PM from 0.1 lb/MMBtu to 0.015 lb/MMBtu would only improve visibility by 0.021deciviews (TRNP–SU, 2002). SIP, Appendix B.3, p. 9. Accordingly, we find that North Dakota reasonably eliminated ESP upgrades from consideration.

Comment: One commenter stated that the control efficiency for baghouses was underestimated.

Response: We agree that the control efficiency for baghouses was underestimated. However, this has no practical bearing on our evaluation of North Dakota's BART control determinations for PM as, consistent with the BART Guidelines, North Dakota was not required to consider the replacement of existing PM control devices. Stanton Station is the only facility where North Dakota is requiring new PM controls, but this is only in association with the spray dryer absorber needed to control SO_2.

Comment: Commenters stated that a PM continuous emission monitoring system (CEMS) must be installed, operated and used to demonstrate continuous compliance with the PM emission limits on units that are subject to BART.

Response: PM CEMS would provide the most robust means of demonstrating continuous compliance with the PM emission limits. However, we disagree that their use is required. We find that the monitoring requirements in the RH SIP are adequate to demonstrate continuous compliance with the PM emission limits.

Comment: BART should be evaluated for both course particulate matter (PM_{10}) and $PM_{2.5,}$ but was only evaluated for PM_{10}. EPA should therefore impose a BART limit on total $PM_{2.5}$.

Response: In our BART Guidelines, for the purposes of identifying visibility impairing pollutants, we allowed states to use emissions of PM_{10} as an indicator for $PM_{2.5,}$ as the components of $PM_{2.5}$ are a subset of PM_{10}. 70 FR 39160. For the same reasons, we find that it is reasonable for North Dakota to have explicitly evaluated BART only for PM_{10}. We also note that North Dakota did evaluate BART for condensable PM which comprises a large portion of the $PM_{2.5}$.

Comment: Commenter stated that North Dakota incorrectly set a limit for PM at .07 lbs/MMBtu. Commenter stated that the actual emissions from most units averaged .03 lbs/MMBtu to .05 lbs/MMBtu, and there is therefore no support for limits higher than .03 lbs/MMBtu. Additionally, the commenter asserted that these limits should be set on a unit-by-unit basis.

Response: As noted in prior responses to comments, the visibility improvement that could be achieved with new or upgraded PM controls is negligible. That response also holds true within the context of setting tighter emission limits. Therefore, we find that PM emission limits set by North Dakota are not unreasonable.

Comment: Commenter stated that EPA deviates from the BART guidelines in failing to establish a clear time period (hourly, 24-hour, 30-day or annual) over which the proposed PM limits would apply. Commenter further stated that North Dakota's BART determinations are unenforceable because there are no proposed monitoring, recordkeeping and reporting requirements that would ensure compliance with the filterable PM limits. Commenter stated that this was contrary to the CAA, because BART is defined as based on continuous emission reductions, which cannot be ensured.

Response: We disagree with the commenter. First, we seek to clarify that while emission limits must be enforceable as a practical matter, the BART Guidelines clearly state that CEMs are not required in every instance. 70 FR 39172. Moreover, the BART Guidelines recognize that monitoring requirements are in many instances governed by other regulations, such as compliance assurance monitoring. North Dakota established monitoring, recordkeeping and reporting requirements for PM emission limits in permits to construct which are included in Appendix D of the SIP. The monitoring requirements for PM include emission testing using EPA-approved test methods, such as Method 5B and Method 17. As specified in each permit to construct, these tests must consist of three test runs, with each test run at least 120 minutes in duration. The monitoring requirements also require the use of a Continuous Assurance Monitoring (CAM) Plan developed in accordance with NDAC 33–15–14–06.10. The CAM Plan will include other provisions necessary to show compliance. We find that these monitoring provisions are adequate to ensure continuous emission reductions as required under BART.

G. Comments on Reasonable Progress and North Dakota's Long-Term Strategy

Comment: Minnkota states that EPA's proposed FIP does not follow EPA guidelines for RP determinations. The commenter cites, without a page number, the Burns & McDonnell report attached to the comments.

Response: EPA is unable to identify any support in the Burns & McDonnell report for the statement. Standing alone, the comment is insufficiently specific to warrant a response. Below, EPA responds to comments that EPA's disapproval of the State's RP determination for AVS is inconsistent with EPA guidelines.

Comment: Minnkota states that EPA's actions disapproving the State's RPGs and imposing RP controls on MRYS lack a basis.

Response: EPA disagrees with this comment. First, as stated in the proposal, the disapproval of the State's RPGs is based on the State's failure to demonstrate that the RPGs the State selected are reasonable, based on the four statutory factors. In particular, the State's use of a degraded background in modeling for visibility benefits was unreasonable, as was the State's failure to select RP controls for AVS. Second, the commenter appears to misinterpret the statements made regarding MRYS Units 1 and 2 as proposing to impose RP controls on those units. In any case, the reference to controls on MRYS Units 1 and 2 is no longer relevant, because we have decided to approve North Dakota's NO_X BART determination for MRYS Units 1 and 2.

Comment: Minnkota states that EPA's action in disapproving the State's LTS is unreasonable and simplistic.

Response: EPA disagrees with this comment. The LTS is a compilation of the State-specific controls relied upon by the State for achieving its RPGs. We are disapproving the State's RPGs along with certain NO_X BART and RP determinations and promulgating a FIP to impose RPGs that are consistent with our FIP NO_X BART and RP determinations. To the extent that the State's LTS relies on these NO_X BART and RP determinations, we must also disapprove those portions of the LTS. Specifically, our partial disapproval of the State's LTS consists of two parts: (1) Disapproval of the LTS with regard to permit limits and monitoring, recordkeeping, and reporting

requirements in the State's submittal that correspond to the NO_X BART determinations we are disapproving; and (2) disapproval of the LTS with regard to the NO_X reasonable progress determination for AVS Units 1 and 2, and with regard to the corresponding monitoring, recordkeeping, and reporting requirements. The monitoring, recordkeeping, and reporting requirements for Antelope Valley are necessary to ensure that the emissions limitations and control measures to meet RPGs are enforceable. See 40 CFR 51.308(d)(3)(v)(F). In addition, these requirements are generally necessary to ensure the BART limits are enforceable. See CAA 110(a)(2). As these requirements are necessary adjuncts to the BART and RP limits, our disapproval of the State's requirements necessarily flows from our disapproval of the NO_X BART determinations for CCS Units 1 and 2 and the disapproval of the State's NO_X RP determination for AVS Units 1 and 2.

Comment: NDDH states that EPA incorrectly rejected NDDH's RP modeling methodology. NDDH believes that the methodology properly took into account effects of international sources, as provided for in the RHR. Furthermore, the hybrid methodology was, in NDDH's view, necessary to accurately simulate transport from large point sources.

Response: Our response to this comment is provided with our responses to modeling comments in section V.C.

Comment: NDDH states that its cumulative modeling methodology more accurately reflects the visibility improvements from controls at point sources.

Response: Our response to this comment is provided with our responses to modeling comments in section V.C.

Comment: NDDH notes that EPA supported the development of the WRAP cumulative modeling, which NDDH states involved considerable time and resources. NDDH argues that it is inappropriate to diminish this extensive effort by using what NDDH views as a less sophisticated and inconsistent single-source approach.

Response: EPA disagrees with this comment. As discussed elsewhere, single-source modeling is not ''less sophisticated'' or ''inconsistent.'' EPA supported development of WRAP CMAQ modeling in order to assist states in developing their RPGs. This support does not endorse the use of cumulative modeling to determine single-source impacts, a faulty approach for the reasons discussed above. As discussed below in responses to comments later in this section, NDDH's comment conflates the requirements for RPGs with the requirements for evaluating RP controls for single sources.

Comment: NDDH states that, on a dollar-per-ton-removed basis, LNB + SNCR appears to be reasonable for AVS. However, NDDH argues that its dollar-per-deciview evaluation of visibility benefits from installing LNB + SNCR at AVS shows that the cost is excessive.

Response: EPA disagrees with this comment, to the extent that it can be understood to argue against EPA's determination to impose LNB at AVS to meet reasonable progress requirements. The dollar-per-deciview cost that NDDH relies upon is faulty because, as discussed elsewhere, it relies on modeling using current degraded background that greatly underestimates the visibility improvement of single-source controls when compared to accepted methodology. It therefore provides no basis for determining that the cost of LNB + SNCR is excessive, or that the cost of LNB alone is excessive. Elsewhere, we have also discussed some of the difficulties with using dollar-per-deciview cost effectiveness values, and how care must be taken not to misinterpret such values. EPA does note that NDDH describes the dollar-per-ton cost of LNB + SNCR as reasonable. Using North Dakota's costs, LNB + SNCR has a cost-effectiveness value of $2,268 per ton removed at Unit 1 and $2,556 per ton removed at Unit 2. By comparison, LNB alone, using North Dakota's costs, has a cost-effectiveness value of $586 per ton removed at Unit 1 and $661 per ton removed at Unit 2. This indicates that LNB has a very reasonable cost effectiveness value on a dollar-per-ton-removed basis, the metric that is most widely used and understood in making control technology determinations.

Comment: NDDH references its CALPUFF modeling of visibility improvement at AVS from installation of LNB. NDDH states that this modeling was intended to show greater visibility improvement from installation of LNB on the two units at Antelope Valley as compared to installation of SCR at Leland Olds Station. NDDH argues that CALPUFF overpredicts visibility improvements and does not comply with 51.308(d)(1) and EPA's guidance.

Response: For reasons expressed elsewhere in this action, we disagree with North Dakota's argument that CALPUFF overpredicts visibility improvements. Our response to the argument that use of CALPUFF does not comply with 51.308(d)(1) and EPA guidance is provided with other responses in this section. While NDDH may have provided the CALPUFF modeling for another purpose, we find it informative. The CAA does not limit EPA in its action on a SIP submittal to considering materials only for the purpose for which the materials were originally intended. Instead, EPA may consider all relevant materials, including the CALPUFF modeling of visibility improvement from installation of LNB at AVS.

Comment: NDDH notes that even if all sources of SO_2 and NO_X in North Dakota were eliminated, North Dakota could not achieve the URP. North Dakota states that additional controls for AVS make almost no difference, and that additional controls on sources outside of North Dakota are necessary to achieve the URP.

Response: As we stated in our proposal, we agree that North Dakota could not achieve the URP in the first planning period even if all North Dakota sources were eliminated. We do not agree that this means that North Dakota can accordingly do nothing in the first planning period to address reasonable progress beyond addressing the BART requirements or that the State can reject otherwise reasonable control measures. EPA assumes that NDDH bases its statement regarding ''almost no difference'' on the modeling using current degraded background conditions. The CALPUFF modeling for AVS (separately provided by NDDH) predicts a visibility benefit at TRNP of 0.754 deciviews from installation of LNB, which EPA does not regard as ''almost no difference.'' Regardless of whether controls on sources outside of North Dakota are necessary in order to achieve natural visibility conditions by 2064, North Dakota is required to provide a reasoned analysis of RP controls on sources within the State. With respect to AVS, the State did not do so.

Comment: North Dakota states that, based on the definition of ''most impaired days'' and ''least impaired days'' in 51.301, and the requirement in 51.308(d)(1) that the RPGs provide for improvement in visibility for the most impaired days over the planning period and ensure no degradation in visibility for the least impaired days over the planning period, any RP visibility analysis must be a cumulative analysis and must address the most impaired days. NDDH states that it consistently modeled BART and RP sources. NDDH argues that, under the RHR and EPA guidance, progress with respect to the URP must be assessed using cumulative modeling based on the controls imposed on multiple sources. It would be

inconsistent with this approach, NDDH asserts, to use single-source modeling to determine improvements for the controls on an individual source.

Response: NDDH conflates (as it does in the next comment and elsewhere, and as do other commenters) the reasonable progress requirements for RPGs and for determination of controls for a single source. The RPGs must provide for improvement in visibility for the most impaired days over the planning period and ensure no degradation in visibility for the least impaired days over the planning period. In evaluating whether the overall RPGs provide for improvement in visibility for the most impaired days, it is not only appropriate, but necessary, to employ current degraded background in cumulative visibility modeling. This allows a comparison of the impact of the State's proposed overall set of regional haze controls against the baseline ''most impaired days.''

We disagree, however, that it is appropriate to analyze and reject potential control measures at specific sources based on modeling using current degraded background conditions. Distinct from the requirement to show that the overall RPGs provide for improvement on the most impaired days, it was incumbent on North Dakota to show that the URP is not a reasonable goal for this planning period and that its RPGs and rejection of reasonable progress controls was reasonable. Just because a state has met the requirement to show improvement on the most impaired days does not mean it has met this separate requirement. Our regulations require that this showing be based on the four statutory reasonable progress factors: The costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. 40 CFR 51.308(d)(1)(ii). We must determine whether the State's showing based on the four factors is reasonable. 40 CFR 51.308(d)(1)(iii).

Here, it is worth noting the process North Dakota used to evaluate potential reasonable progress controls. North Dakota employed certain screening tools to identify sources in North Dakota that potentially affect visibility in Class I areas. It focused mainly on point sources, starting with the list of sources subject to Title V permitting requirements. It further pared this list by focusing on the ratio of emissions to distance to the nearest Class I area, known as Q/D. A Q/D value of 10 was chosen as a threshold. North Dakota chose this value based on FLM guidance and the State's interpretation of statements in EPA's BART guidelines as to sources that could reasonably be exempted from the BART review process; *i.e.,* for a state with a BART contribution threshold of 0.5 deciviews, sources emitting less than 500 tons per year located more than 50 kilometers from a Class I area or emitting less than 1000 tons per year located more than 100 kilometers from a Class I area.[64] We note that North Dakota selected 0.5 deciviews as its contribution threshold for determining which sources are subject to BART.

North Dakota eliminated any source with a Q/D less than 10 from further consideration for reasonable progress controls. Then, North Dakota eliminated several sources with a Q/D over 10 that, as a result of events after the 2000 to 2004 baseline period, had reduced emissions sufficiently so that the sources' Q/D became less than 10. After this paring, seven units remained. We note that four of the remaining seven units are EGUs, and three of them are comparable in size and emissions to some of the largest BART sources in North Dakota.

For these seven remaining units only, North Dakota considered the four statutory reasonable progress factors in evaluating potential control technologies for reducing SO_2 and NO_X emissions. However, when it eliminated all reasonable progress controls for these pollutants for these units, North Dakota relied almost exclusively on its cumulative modeling, using current degraded background to conclude that the cost on a dollar per deciview basis was excessive.[65]

As noted in a prior response, we conclude that it was not reasonable for North Dakota to model visibility improvement for potential individual source reasonable progress controls using current degraded background. As explained, we conclude that the State's approach is inconsistent with the CAA. We also note that the State's use of current degraded background to analyze single-source controls is facially inconsistent with the Q/D threshold it used to determine which sources should be retained for a detailed evaluation of reasonable progress controls. As noted, the State selected a Q/D of 10 based in part on EPA BART guidance on sources that could be considered to contribute to visibility impairment. That guidance relied on a contribution threshold of 0.5 deciviews, which was premised on CALPUFF modeling using natural background. By modeling single-source impacts and benefits using current degraded background, North Dakota employed a completely different metric that rendered meaningless its Q/D threshold and subsequent analysis of the four factors.[66]

Comment: NDDH notes that EPA's guidance, ''Additional Regional Haze Questions,'' dated August 24, 2006, states that the RP demonstration involves a test of a strategy and how much progress is made through that strategy. NDDH also notes that the guidance states that RP modeling is tied to a strategy and is not a source-specific demonstration like the BART assessment. NDDH asserts that EPA's rejection of the North Dakota cumulative modeling for single source visibility benefits arbitrarily ignores this guidance.

Response: We find that this comment, like the previous comment, conflates two separate aspects of reasonable progress: (1) The manner in which the overall strategy is modeled for purposes of comparison to the URP, and (2) the determination of controls for potentially affected sources and source categories. In the latter context, we conclude that our interpretation is reasonable and that the State's consideration of visibility improvement based on current degraded visibility was unreasonable.

First, we have refined our guidance and our views on reasonable progress since the cited document was issued. In 2007, we issued formal reasonable progress guidance, which clearly contemplates that controls may be evaluated on a source-specific basis.[67] It is difficult to imagine how the reasonableness of a control strategy involving large stationary sources could be determined without considering the reasonableness of controls for the specific stationary sources. Second, the comment ignores the fact that North Dakota itself conducted a source-specific analysis of potential control options using the four factors.[68] It was only when it considered the additional factor—visibility—that North Dakota switched to a cumulative analysis. Third, the commenter ignores the cited guidance's repeated admonition that reasonable controls based on the four

[64] The ratios of these values equal a Q/D of 10.

[65] Further detail regarding North Dakota's analysis can be found in our proposal. 76 FR 58624–58628.

[66] We note that AVS 1 and 2 had Q/D values exceeding 100, and Coyote had a Q/D value of 248, all far above the threshold Q/D value.

[67] We note that guidance is not binding on EPA and does not supersede relevant statutory and regulatory requirements.

[68] We note that other states—for example, Colorado—have also considered reasonable progress control options on a source-specific basis and that we intend to do so in our FIP for Montana for regional haze.

statutory factors (which don't include visibility improvement) must be included in the plan. Thus, for example, the guidance states:

> ''However, the statutory factors must be applied before determining whether given emission reduction measures are reasonable. In particular, the State should adopt a rate of progress greater than the glidepath if this is found to be reasonable according to the statutory factors.''

Guidance at 9. Similarly, the guidance states:

> ''If after applying the four statutory reasonable progress factors, the rate of visibility improvement is still less than the uniform glide path, States may adopt the calculated RPGs, provided that they explain in the SIP how achieving the uniform glide path is not reasonable based on the application of the factors. States must demonstrate why the slower rate is reasonable * * *''

Guidance at 8–9.

Comment: Basin Electric states that EPA has no statutory authority to compel installation of LNB at AVS. Basin Electric argues that the regional haze program applies only to sources in existence before 1977, and that sources constructed after that date are subject only to the PSD permitting program. Basin Electric concludes that EPA cannot impose retrofit requirements on a source such as Antelope Valley that has already been subject to the PSD permitting program.

Response: EPA disagrees with this comment. First, the requirements established in the RHR provide no basis for the commenter's argument, as reasonable progress requirements are clearly not limited to sources in existence before 1977. In particular, section 51.308(d)(1)(i)(A) requires consideration of the four statutory factors for ''potentially affected sources,'' a term not limited to sources in existence before 1977, and also requires a demonstration showing how the four statutory factors were taken into consideration. Section 51.308(d)(1)(iii) requires the Administrator to evaluate this demonstration, explicit authority for the action we are finalizing. Finally, section 51.308(d)(3) requires that a state, in developing its LTS to achieve the RPGs, consider ''major and minor stationary sources,'' a term again not limited to sources in existence before 1977.

Nor does the CAA itself provide any basis for the commenter's argument. The comment is in error in suggesting that the existence of requirements regarding visibility under the PSD permitting program necessarily implies that section 169A of the CAA cannot apply to sources subject to the PSD permitting program. As a general matter, it is well understood that the CAA frequently imposes overlapping requirements on sources. Nothing in Subpart I of Part C of Title I of the CAA, which provides for the PSD permitting program, indicates that sources subject to the PSD permitting program are somehow excluded from the requirements of Subpart II. Similarly, nothing in EPA's rules giving the minimum requirements for a state's PSD permit program at 40 CFR 51.166 or the federal PSD permit program at 52.21 supports the notion that sources subject to the PSD permit program are excluded from the requirements of Subpart II.

Furthermore, any reasonable reading of CAA section 169A reveals that Congress did not limit the requirements to achieve reasonable progress to BART and PSD sources. Congress required EPA to promulgate regulations to:

> ''require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) of this section is located * * * to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a) of this section, including [BART].''

There is nothing in this language to suggest that Congress intended to exempt sources constructed after 1977, or to exempt sources subject to the PSD permitting program.

The commenter argues that CAA section 169A(g)(1) supports its view, claiming that ''Section 169A(g)(1) defines the criteria to be employed in determining reasonable progress, but limits the application of that criteria to 'any existing source.' '' The commenter interprets this term to mean sources constructed before 1977, but does not explain how reasonable progress toward the national goal of remedying existing impairment of visibility could continue to be made under the commenter's interpretation. Instead, the statute and our rules contemplate a periodic, continuing assessment of reasonable progress, including assessment of the four statutory factors for existing sources at the time of assessment. Thus, our regional haze regulations reflect a different interpretation—instead of ''any existing source,'' section 51.308(d)(1)(i)(A) refers to ''potentially affected sources.'' As discussed above, there is no suggestion that we intended to limit this to only mean sources constructed after 1977, and it is too late for the commenter to challenge our regional haze regulations now. Thus, the commenter's parsing of the statutory language and the legislative history is irrelevant. Furthermore, EPA's reports to Congress and other sources cited by the commenter do not reflect our interpretation of the RHR and therefore have no regulatory weight.

Comment: Basin Electric states that, under the RHR, if a state proposes an RPG that doesn't meet the URP, all the state has to do is explain why meeting the URP isn't reasonable.

Response: This comment understates the requirements of the RHR. If a state establishes an RPG that does not meet the URP, the state must demonstrate, on the basis of the four RP factors, that (1) meeting the URP isn't reasonable; and (2) the RPG adopted by the state is reasonable. The commenter's statement ignores the requirement to consider the four RP factors and to show that the RPG is reasonable. EPA therefore disagrees with the statement.

Comment: Basin Electric argues that no state has full control over its RPGs, because visibility improvements depend largely on reductions from other states.

Response: Even if visibility impacts to an in-state Class I area are largely due to sources in other states, each state is nonetheless obliged to make RP determinations for in-state sources based on a reasonable analysis of the four statutory factors. In this case, NDDH's reliance on current degraded background modeling as an additional factor was unreasonable. Thus, Basin Electric's argument gives no basis for EPA to change its disapproval of the State's RPGs or the NO_X RP determination for AVS.

Comment: Basin Electric states that visibility improvement cannot be ignored in the RP four-factor analysis.

Response: As we have noted, the four RP factors are the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. As we have also noted, when visibility benefits are considered in the analysis of potential single-source controls, such consideration must be reasonable. In this case, NDDH unreasonably relied on modeling using current degraded background to reject RP controls for AVS. Finally, in imposing LNB to meet reasonable progress requirements, EPA has considered visibility improvement, which, as shown by the CALPUFF modeling provided by NDDH, is 0.754 deciviews at TRNP for installation of LNB at AVS.

Comment: Basin Electric states that EPA's disapproval of North Dakota's RP determination for AVS is based solely on EPA's rejection of the State's use of a degraded background in modeling.

Response: The basis for our disapproval is fully explained in our proposal. 76 FR 58627, 58629–58630. We did not rely solely on the State's use of improper modeling. We note that, despite the State's flawed use of current degraded background modeling, we nonetheless approved several of the State's other reasonable progress determinations based on our consideration of the statutory reasonable progress factors.

Comment: Basin Electric argues that the dollar per deciview benefit of LNB + SNCR at AVS, computed using North Dakota's modeling, is much higher than that some FLMs have found acceptable. Basin Electric states that EPA does not object to the use of dollar per deciview in making an RP determination. Instead, EPA objects only to the modeling itself.

Response: EPA guidance indicates that it may be reasonable to evaluate the dollar per deciview value in appropriate circumstances. However, EPA has not established a threshold, required or recommended, below which such value is considered reasonable and above which it is considered unreasonable. Nor have we endorsed or accepted any values the FLMs may have found acceptable. Under our regulations, we determine whether a state's rejection of reasonable progress controls is reasonable based on the reasonable progress factors. We have explained in response to other comments why North Dakota's modeling using current degraded background and dollar per deciview values based on that modeling are not reasonable. In addition, EPA is imposing only LNB, not LNB + SNCR, at AVS. Thus, the dollar per deciview benefit of LNB + SNCR is not directly relevant. We provide further detail regarding use of dollars per deciview values in our response to prior comments.

Comment: Basin Electric states that EPA has no basis to disregard the State's cumulative modeling of visibility improvements at AVS. Basin Electric argues that the reasoning for using degraded background conditions in BART modeling applies equally to RP modeling, because the horizon for RP sources is 2018 (similar to the five-year horizon for BART).

Response: As noted elsewhere, the reasoning for using current degraded background conditions in BART modeling is faulty. That reasoning therefore gives no basis for using current degraded background conditions in RP modeling.

Comment: Basin Electric states that EPA admits that there is no requirement that states, when performing RP analysis, follow the modeling procedures set out in the BART guidelines. Basin Electric states that EPA does not cite any statute or rule that the North Dakota RP modeling violates.

Response: As we have noted, our regulations require consideration of four factors in reasonable progress determinations; visibility improvement is not one of the specified factors. As we have indicated, when a state considers visibility improvement as an additional factor in evaluating single-source control options, that consideration must be reasonable in light of the explicit goals established by Congress in CAA section 169A.

Comment: Basin Electric states that EPA is in error in asserting that North Dakota modeled BART sources one way and RP sources another way. Basin Electric argues that even if EPA is correct, there is no authority that requires the State to model BART and RP sources the same way.

Response: We disagree with the commenter. North Dakota relied on CALPUFF modeling using natural background for almost all BART sources. The only exceptions were MRYS 1 and 2 and LOS 2, and then only for NO_X. We explained in our proposal why North Dakota's alternative modeling for these BART units for NO_X was unreasonable. Despite the similarity of several of the reasonable progress units to the BART units, North Dakota modeled visibility improvement for potential control options on individual reasonable progress sources using current degraded background. We have explained in our other responses and in our proposal why this was unreasonable.

Comment: Basin Electric argues that states have the responsibility to set RPGs and evaluate RP controls. Basin Electric states that nothing prohibits the State from using degraded background conditions.

Response: For the reasons already expressed, we disagree with the import of this comment. We agree that the states have the responsibility to set RPGs and evaluate RP controls in the first instance, but EPA must determine if a state's determinations for RPGs and for controls satisfy the requirements of the RHR and are reasonable. In the case of AVS 1 and 2, the State's determination was unreasonable.

Comment: Basin Electric argues that, in considering the CALPUFF modeling results for AVS, EPA should use the 90th percentile values, not the 98th percentile values, and should use the three year average, not the worst-case year.

Response: For the same reasons expressed in our responses to similar comments related to BART in section V.C, we disagree.

Comment: Basin Electric argues that the case for using 90th percentile values is stronger for RP, as RP is determined based on improvement for the most impaired days, which is defined as the average impairment for the 20% of days with the highest impairment. Basin Electric states that use of the 98th percentile is inconsistent with this provision.

Response: EPA disagrees with this comment, which conflates and misstates requirements of the RHR. Reasonable progress is not ''determined'' based on improvement for the most impaired days; instead, improvement for the most impaired days is one, and not the only, requirement for reasonable progress. Separately, states are required to evaluate, considering the four statutory RP factors, controls for potentially affected sources. In this separate determination, when a state considers visibility benefits as an additional factor, a state's assessment and analysis of visibility benefits must be reasonable. Use of the 90th percentile, which seriously understates visibility benefits, is unreasonable, and cannot be justified by reference to the separate requirement regarding the most impaired days.

Comment: Basin Electric notes that EPA evaluated the cost of controls for AVS Units 1 and 2 separately, but evaluated the visibility benefits combined. Basin Electric argues that this is an invalid, apples-to-oranges comparison.

Response: Given that AVS 1 and 2 are the same size and are co-located, and reductions would be similar from each, we do not agree that it is invalid to consider the combined visibility benefits. There is no requirement, when considering visibility benefits as an additional factor, to separately model co-located and similar units. Furthermore, dollar-per-ton values would not change significantly if costs were evaluated for the two units combined. Finally, EPA notes that, even if the visibility benefits were evenly divided between the two units, EPA would still consider LNB appropriate at each unit, based on the four statutory factors and the additional factor of visibility benefits.

Comment: Basin Electric references additional modeling, provided by Basin Electric, that shows that the visibility benefits (using 90th percentile, three-year average, and a receptor-by-receptor approach) for LNB at AVS Units 1 and 2 combined is 0.07 deciviews. Divided between the units equally, this would be

0.035 deciviews. Basin Electric argues that these improvements do not support imposing LNB, especially when the dollars per deciview improvement is considered.

Response: As discussed elsewhere, we find it reasonable to use the 98th percentile, worst-of-three-year modeled benefit over all receptors. The use of the 90th percentile, the three-year average, and the receptor-by-receptor approach understates the visibility benefits of controls. As a result, the dollar-per-deciview value computed using that approach, found in Table 8 of Basin Electric's comments and from which Basin Electric derives the 0.07 deciview figure, is not reasonable or persuasive.

Comment: Basin Electric argues that EPA's justification for disapproving North Dakota's RPGs is insufficient. Basin Electric asserts that, even if EPA is correctly determining BART and RP limits for the individual facilities, EPA must provide some additional basis for disapproving the RPGs, such as: (1) North Dakota is not providing for improvement for the worst 20% days; or (2) North Dakota is not ensuring no further degradation for the best 20% days. Basin Electric also notes that EPA did not assess how far short (presumably quantitatively) North Dakota's selected goals fall from reasonable progress.

Response: EPA disagrees with this comment. The bases suggested by Basin Electric as necessary for disapproval (improvement for the worst 20% days and no further degradation for the best 20% days) are requirements of the RHR, but they are not the only requirements. As noted in the proposal, if a state's RPGs do not meet the URP, the state must demonstrate that the RPGs are reasonable, based on consideration of the four statutory factors, and that meeting the URP is unreasonable. The State's failure to satisfy this requirement (and not the requirements noted by the commenter) is the basis for the disapproval of the State's RPGs. In particular, the State's use of current degraded background in modeling for visibility benefits was unreasonable, as was the State's failure to select reasonable RP controls for AVS Units 1 and 2. It is unnecessary to quantify how far short North Dakota's selected goals fall from the RPGs proposed by EPA in order to determine that the State's analysis was unreasonable. Nonetheless, EPA notes that the proposed NO_X RP limit, based on installation of LNB, for AVS Units 1 and 2 will result in combined emissions reductions of over 7,000 tons per year of NO_X, with a visibility benefit of 0.754 deciviews at TRNP. Due to time and resource constraints, we lacked the capability to re-do the WRAP modeling to precisely re-calculate the RPGs.

Comment: Basin Electric states that the values for cost effectiveness of LNB at AVS Units 1 and 2 do not reflect up-to-date costs, which would be higher. However, Basin Electric specifically disclaims that up-to-date costs, standing alone, would provide a sufficient reason to reject LNB.

Response: In its FIP, EPA is relying in part on costs provided by North Dakota in its RH SIP to meet the requirements of the RHR. In promulgating the FIP, it is not necessary to regenerate the costs for AVS 1 and 2. Nonetheless, EPA agrees that regenerated costs for LNB at AVS Units 1 and 2 would likely support EPA's determination. LNB is a widely used, inexpensive control option to reduce NO_X emissions.

Comment: Citing 40 CFR 51.308(d), Basin Electric states that EPA does not propose a true FIP for RPGs, because RPGs are defined by rule as a rate of visibility improvement. Basin Electric alleges that rerunning the WRAP CMAQ modeling with the controls imposed to quantify the rate of improvement would cost a modest amount of money, and states that this amount of money should be contrasted with the cost of controls that will, according to Basin Electric, result in negligible visibility improvements.

Response: As discussed elsewhere, the visibility improvements from AVS alone will not be negligible, as shown by the CALPUFF modeling provided by North Dakota, and even the CALPUFF modeling provided by Basin Electric with its comments. We assume Basin Electric bases its statement about negligible visibility improvements on the modeling using current degraded background relied on by North Dakota, which, as discussed elsewhere, we are disregarding. As discussed in the notice of proposed action, we would have preferred to quantify the rate of improvement, but time and resource constraints prevented this. Re-running the WRAP CMAQ modeling would not change our conclusion about the reasonableness of LNB at AVS 1 and 2.

Comment: Basin Electric states that, without modeling, there is no basis for EPA to state that our FIP would increase the rate of visibility improvement on the 20% worst days. Basin Electric asserts that emissions reductions from the FIP sources are miniscule compared with the total reductions assumed in the WRAP CMAQ modeling for RPGs. Basin Electric notes that that modeling showed an overall 0.6 deciview improvement at TRNP and a 0.5 deciview improvement at LWA.

Response: It is logical to infer that the considerable emissions reductions at CCS and AVS will increase the visibility improvement on the 20% worst days. We acknowledged in our proposal that this improvement would not be sufficient to achieve the URP (76 FR 58632) and agree that the improvement will likely be small given that the starting point for the cited modeling is current degraded conditions. But the same could be said for BART sources, yet North Dakota has acknowledged that such sources contribute to visibility impairment in the Class I areas in North Dakota.

Comment: Basin Electric states that the disapproval of North Dakota's RPGs and our FIP have no meaningful effect.

Response: As we stated in our proposal, the RPGs are not enforceable values. To that extent, they do not impose requirements on anyone. However, we are required to disapprove the RPGs because they do not reflect reasonable controls at CCS and AVS, and we are required to impose a FIP in lieu of the State's unapprovable RPGs. Our reasonable progress controls at AVS and our BART controls at CCS do impose enforceable requirements.

Comment: Basin Electric asserts that, because EPA has no basis for our disapprovals and FIPs at individual facilities, EPA also has no basis for our FIP for RPGs.

Response: See our responses to prior comments. We have explained the bases for our disapprovals.

Comment: NPCA comments that it is unreasonable for EPA to give Basin Electric until July 31, 2018 to install LNB at Antelope Valley because that date is not ''as expeditious as possible.'' NPCA states that the deadline should be January 26, 2013, which NPCA believes represents a reasonable amount of time to install the combustion controls.

Response: EPA disagrees with this comment. First, unlike for BART sources, the RHR and the CAA do not explicitly require that limits for RP sources be met as expeditiously as practicable. Furthermore, the commenter misstates the deadline: The proposed FIP requires Basin Electric to meet the proposed NO_X emissions limit at Antelope Valley ''as expeditiously as practicable, but in any event no later than July 31, 2018.'' Thus, Basin Electric is under an obligation to install the combustion controls as expeditiously as practicable. The cutoff date of July 31, 2018 ensures that the RP limit for Antelope Valley is met by the end of the planning period, thereby also ensuring that the proposed RPGs are met.

Comment: NPCA states that EPA should reevaluate the cost estimate for

SCR + reheat at AVS. NPCA argues that North Dakota's cost estimate is flawed in the same way as for LOS 2 and MRYS 2. EPA proposed to disapprove the costs for Leland Olds Unit 2; NPCA argues that EPA therefore cannot rely on the same costs in determining RP controls for Antelope Valley.

Response: While EPA agrees that the cost estimates for SCR at LOS 2 and MRYS 2 are flawed, the costs for AVS nonetheless present a sufficient basis for EPA's RP determination. EPA accepts, and NPCA does not question, the costs for LNB alone. Even if the cost estimate for SCR + reheat was redone, it would likely remain considerably more costly than LNB. LNB is very cost-effective and achieves reductions of about 78% of SNCR + LNB and 64% of SCR with reheat. Given the extreme cost-effectiveness of LNB and reductions of at least 64% of more expensive controls, and taking into account the four statutory factors as well as visibility benefits of LNB, EPA has determined that it is reasonable to impose LNB at Antelope Valley in this planning period. Of course, the imposition of LNB at AVS does not rule out the imposition of post-combustion controls in the next planning period.

Comment: NPCA states that North Dakota's cost estimates for SCR + reheat and ASOFA + SCR + reheat at Coyote Station are flawed. NPCA argues that EPA should redo the RP analysis for Coyote, and that a revised RP four-factor analysis would show that SCR + reheat is reasonable. In addition, NPCA notes that the facility is fairly close to TRNP, the State cannot meet the URP, and SCR + reheat would reduce emissions by over 10,000 tpy.

The NPS states similar concerns with North Dakota's use of inappropriate dollar per deciview estimates as a basis for determining that no additional controls were appropriate under RP for Coyote Station. NPS notes that EPA has recognized that the methods North Dakota used to reach that conclusion, both for estimating costs and visibility improvement, are invalid. NPS infers that North Dakota has not met its responsibility to conduct a valid RP analysis and that EPA must therefore assume that responsibility. An NPS analysis indicates SCR at Coyote would be more cost effective than at any other North Dakota EGU. NPS concludes that EPA must impose an RP emissions limit for Coyote of 0.07 lb/MMBtu (the same as for MRYS 1 and 2, and LOS 2).

Response: EPA has now decided that the rejection of SCR at Coyote is appropriate regardless of the State's cost analysis, based on the court's upholding of North Dakota's determination in the BACT proceeding for MRYS that SCR is technically infeasible. Like MRYS, Coyote is a cyclone unit burning North Dakota lignite. Thus, based on current evidence, we cannot conclude that North Dakota's rejection of SCR at Coyote was unreasonable.

Comment: NPCA states that the record shows that a wet scrubber would be cost effective at Coyote Station, and believes that the actual cost effectiveness may be better. NPCA computes that a 99% efficient wet scrubber would remove about 13,000 tons per year of SO_2. The cost overestimates made by other facilities indicate that EPA should revisit this cost analysis.

Response: EPA disagrees with this comment. First, NPCA did not identify any cost overestimates related to wet scrubbers. The issues EPA identified in its proposal related to costs of SCR, which provides no basis for inferring cost overestimates for wet scrubbers. As far as the record, Table 9.8 in North Dakota's RH SIP submittal shows a cost effectiveness value of $2,593 per ton of SO_2 removed at a control efficiency of 95%. As stated in our proposal, while this value is within the range of cost effectiveness values that North Dakota, other states, and we have considered reasonable in the BART context, it is not so low that we are prepared to disapprove the State's conclusion in the reasonable progress context. In addition, Coyote Station currently employs a spray dryer to control SO_2 emissions at a control efficiency of approximately 66%. The existence of this control supports our approval of the State's determination. Analogous to our policy in the BART context, we do not expect sources to install entirely new SO_2 controls where they are already achieving reductions greater than 50%.

Comment: NPCA notes EPA's response to a petition from the Dakota Resource Council regarding violations of PSD Class I SO_2 increments, in which EPA stated that a SIP call would not achieve any better result than other pending actions, including regional haze actions. NPCA argues that, based on this response, EPA should require SO_2 controls at Coyote Station to reduce consumed Class I SO_2 increment.

Response: EPA disagrees with this comment. As discussed extensively in our response to a prior comment, PSD permit program requirements in Subpart I, Part C of title I of the CAA are separate from visibility protection requirements in Subpart II of Part C. Therefore, Class I SO_2 increments are not relevant to our action on North Dakota's RH SIP submittal to meet the requirements of CAA section 169A and the RHR. Nonetheless, EPA notes that SO_2 emissions will be substantially reduced by our action on the North Dakota RH SIP, as detailed in Table 21 of our notice proposing action.

Comment: NPCA argues that limestone injection at Heskett Station is a cost effective and reasonable RP control that would achieve SO_2 reductions of 1614 tons per year. However, NPCA notes that the agreement between North Dakota and the facility only requires reductions of 573 tons per year of SO_2. NPCA concludes that EPA should require Heskett to achieve an SO_2 limit that reflects the capabilities of limestone injection.

Response: EPA considers the State's determination to impose the stated reductions in the permit included in SIP Supplement No. 1 to be reasonable and to satisfy reasonable progress requirements in this initial planning period. Further reductions may be appropriate in a subsequent planning period.

Comment: NPCA argues that staged combustion is a cost effective control for NO_X at Heskett Station at $1,700/ton. Even though the emission reduction is only 215 tons per year, NPCA argues that EPA must consider all potential sources that can contribute to achieving RPGs, including NO_X reductions from Heskett Station.

Response: EPA disagrees with this comment. In the first instance, it is the responsibility of the State to consider the four statutory factors for potentially affected sources. EPA's task is to determine if the State's analysis of controls satisfies the requirements of the RHR and is reasonable. In this case, the State did consider the four statutory factors, as well as an additional factor—visibility improvement based on modeling using current degraded background. While EPA does not consider the State's use of modeling based on current degraded background reasonable, EPA nonetheless considers the result of the State's analysis in this instance to be reasonable, based on the relatively low emissions reductions and the costs of controls.

Comment: NPCA states that several NO_X control options for Tioga Gas Plant are cost effective, with the lowest at $521/ton. Although the emissions reductions are lower, NPCA argues that EPA should consider all potential sources that can contribute to achieving RPGs. In addition, NPCA notes that the facility is only 35 km from LWA and is also near TRNP.

Response: EPA disagrees with this comment for the same reasons discussed in response to the prior comment.

Comment: NPCA states that EPA should re-run the WRAP CMAQ modeling with emissions that reflect the BART and RP controls that EPA proposes to approve or impose through a FIP. NPCA argues that EPA and the State should track actual visibility improvements versus projected visibility improvements, and that this would assist in estimating visibility improvements from other measures.

Response: As stated in our notice of proposed action, we could not re-run the WRAP modeling due to time and resource constraints. We expect the State to quantify the visibility improvement in its next RH SIP revision.

Comment: The NPS stated that North Dakota did not meet its responsibility to perform a valid RP analysis, as the State's cost analysis and modeling for RP sources were flawed. Although the NPS stated that this was a general issue, the comment specifically noted flaws in the State's cost analysis for Coyote Station. The NPS argued that EPA must redo the analysis, and cannot propose to approve any RP determinations.

Response: EPA disagrees with the conclusion of this comment. Although EPA agrees that the State's cost analysis for SCR at Coyote Station was flawed, and that the State's modeling of visibility benefits of controls on RP sources using degraded background conditions was flawed, there is a sufficient basis for EPA's actions. As noted in a prior response, EPA has now decided that the rejection of SCR at Coyote is appropriate regardless of the State's cost analysis, based on the court's upholding of North Dakota's determination in the BACT proceeding for MRYS that SCR is technically infeasible. Like MRYS, Coyote is a cyclone unit burning North Dakota lignite.

As noted, with respect to other reasonable progress units, we have disregarded the State's visibility analysis in our review of the State's reasonable progress determinations and instead focused on the four reasonable progress factors. Except for AVS 1 and 2, we have determined that the State's reasonable progress determinations were not unreasonable.

Comment: The NPS stated that the RP analysis of SCR for Coyote Station was cursory. The NPS noted that, under the 0.50 lb/MMBtu annual rate agreed to by the State, Coyote Station would still have the highest controlled emissions rate of any EGU in North Dakota and would be the 13th largest emitter of NO_X among all EGUs, using 2010 rates in the Clean Air Markets Division database. NPS argues that, as a result, SCR should have been given more consideration.

Response: First, EPA disagrees with some of the NPS computations. Based on 2010 Clean Air Markets Division data, Coyote Station was the 124th largest emitter of NO_X among EGUs at 13,691 tons. At the rate of 0.50 lb/MMBtu agreed to by the State, the emissions (with the same heat input) would have been 8,800 tons, which would have made Coyote Station the 183rd largest emitter of NO_X for that year. This represents a reduction of over 4,800 tons per year. In any case, the relative rank of a facility among other facilities nationwide in overall emissions is not a necessary component of the RP analysis.

We have already explained why we are not disapproving the State's rejection of SCR at Coyote.

Comment: The NPS noted that the RP analysis for Coyote Station did not consider upgrades to the existing dry scrubber.

Response: In making an RP determination, the State must consider a reasonable range of controls. For SO_2, the State considered a new wet scrubber. While EPA agrees that upgrades to the existing dry scrubber should have been considered, starting with feasibility, EPA is not prepared to determine, on the basis of this consideration, that the State was unreasonable in addressing RP requirements for Coyote Station through imposing the 0.50 lb/MMBtu NO_X limit and not imposing an SO_2 limit. EPA does expect the State to revisit the range of controls in the next planning period.

Comment: NPS provided cost estimates for installation of SCR at Coyote Station, showing a cost effectiveness value of $1,600 per ton removed and an incremental cost effectiveness value of $2,300 per ton removed. NPS stated that these costs are lower than those for SCR at LOS 2 and MRYS 1 and 2. NPS argued that, for consistency, EPA must impose SCR at Coyote Station.

Response: The basis for our decision regarding the State's rejection of SCR at Coyote is explained in prior responses.

H. Comments on Health and Ecosystem Benefits, and Other Pollutants

Comment: Several commenters stated that haze pollution significantly impacts human health and ecosystem health, in addition to obscuring scenic vistas. Specifically, commenters asserted that haze pollution contributes to heart attacks, asthma attacks, chronic bronchitis and respiratory illness, increased hospital admissions, lost work days, and even premature death. One commenter noted the specific haze pollutants NO_X, SO_2 and PM, which the commenter stated are all harmful to the human body.

Some commenters cited a 2009 Clean Air Task Force report in stating that coal-fired power plants in North Dakota put 207 people at risk of premature death, 321 people at risk of a heart attack, and 3,500 at risk of an asthma attack each year. Several commenters encouraged EPA to finalize the regional haze proposal citing their own health problems, most notably individuals with asthma or respiratory problems, seniors, and parents of asthmatic children. One commenter stated the rate of asthma in North Dakota children is increasing rapidly.

Some commenters stated that haze pollution negatively impacts ecosystem health. Commenters expressed concern for the effects of haze pollution on wildlife, farm animals, plants including crops, and water bodies. Several commenters generally expressed their disapproval of coal as an energy source because it is dirty, with some insisting that North Dakota invest in cleaner energy.

Response: We appreciate the commenters' concerns regarding the negative health impacts of emissions from the coal-fired power plants in North Dakota. We agree that the same $PM_{2.5}$ emissions that cause visibility impairment can be inhaled deep into lungs, which can cause respiratory problems, decreased lung function, aggravated asthma, bronchitis, and premature death. We also agree that the same NO_X emissions that cause visibility impairment also contribute to the formation of ground-level ozone, which has been linked with respiratory problems, aggravated asthma, and even permanent lung damage. We agree that these pollutants can have negative impacts on plants and ecosystems, damaging plants, trees and other vegetation, and reducing forest growth and crop yields, which could have a negative effect on species diversity in ecosystems. However, for purposes of this action, we are not authorized to consider these impacts in evaluating the State's RH SIP and promulgating our FIP, and we have not done so.

Comment: Some commenters stated that regional haze is not a health-based standard.

Response: We agree that regional haze is not a health-based standard.

I. Miscellaneous Comments

Comment: Several commenters stated that the large economic costs of installing pollution controls stated by electricity providers failed to consider

the significant offsets of those costs. One commenter stated that TRNP is an economic engine, further stating that the park logged over 580,000 recreational visits, was responsible for 500 jobs and $27.4 million in expenditures in 2009 alone. Another commenter stated that, while the installation of pollution controls costs money, it also stimulates the economy by providing jobs in construction and installation. Others stated a willingness to pay the expected increase in their utility costs, with one commenter stating that North Dakota's electricity is amongst the least expensive in the U.S.

Response: We agree with the comments. Although we did not consider the potential positive benefits to the local and national economies in making our decision today, we do expect that improved visibility would have a positive impact on tourism-dependent local economies. Also, retrofitting CCS with SNCR is a large construction project that we expect to take 5 years to complete. This project, along with the other pollution control upgrades proposed in the SIP, will require well-paid, skilled labor which can potentially be drawn from the local area, which is expected to benefit the economy.

Comment: Multiple commenters stated that North Dakota is one of only 12 states in the U.S. who meet all NAAQS.

Response: While the relative air quality in North Dakota is considered good compared to many other states, as further discussed elsewhere in our responses, our actions pertaining to the RHR are governed by the national visibility goal established by Congress in the CAA. The goal is to return the visibility conditions in Class I areas back to natural conditions. And visibility in Class I areas in North Dakota is impaired by pollution from industrial sources within the state. There is no direct correlation between natural visibility conditions and the current NAAQS.

Comment: Several commenters stated that the American Lung Association ranked Mercer County, North Dakota, home to several coal-fired power plants, as one of the 25 cleanest counties in the U.S., and ranked Billings County, North Dakota, home to TRNP, the third cleanest county in the United States.

Response: The commenters are referring to the 2010 State of the Air Report, which assigns letter grades for counties with air quality monitors for ozone and particulate pollution.[69] The report, issued every year by the American Lung Association, did give the mentioned counties an ''A'' grade in 2010 for ground level ozone. The State of the Air Report does not, however, address regional haze. The RHR relies on a combination of monitoring data to assess current visibility conditions and modeling of predicted visibility impacts at federal Class I areas (primarily national parks and wilderness areas), which is a different methodology than direct measurement of ozone and particulate pollution, which is the approach relied on by the American Lung Association. Current visibility impacts at TRNP and LWA are over double the impacts estimated for natural conditions, and North Dakota's Class I areas are not projected to meet the URP in the initial planning period.

Comment: Commenter cited the NPS's Web page for TRNP, which states that the park has better air quality than every other U.S. national park aside from Denali National Park in Alaska.

Response: In our action, we are responding to the national visibility goal established by Congress in the CAA. The goal is to return to natural visibility conditions. TRNP is not meeting the URP for returning the park to natural visibility conditions. The NPS' Web page for TRNP does state that air quality is relatively good, but it also discusses the fact that pollution sometimes causes haze and may affect other sensitive resources in the park. For current information on TRNP's air quality visit *http://www.nps.gov/thro/naturescience/airquality.htm.*

Comment: Commenter insisted that CCS and LOS should be retired, as they are respectively rated the 3rd and 19th most polluting coal plants in the U.S. (Citing sourcewatch.org.)

Response: While we respect the commenter's opinion, a regulatory process has been established under the CAA and our regulations for considering pollution controls to address visibility impairment, and our action follows that process.

Comment: Many commenters generally stated that the costs of EPA's proposed rule are high when compared to benefits. They stated that NDDH's SIP costs much less to implement than does EPA's plan, and produces similar benefits. High costs were cited both with respect to capital costs of the controls as well as increased costs (retail price per kilowatt hour) to consumers particularly fixed and lower-income consumers. Negative economic impacts to agriculture and oil and gas industries were cited, noting that the success of these industries is dependent on low-cost and reliable electric power. Several commenters specifically mentioned a cost of $700 million to install EPA's proposed controls and the potential for lost jobs. Some commenters expressed a willingness to pay the potential increase in their electric bills because they supported EPA's action.

Response: While we disagree with a number of the commenters' assertions, these comments are largely no longer relevant because we have decided to approve North Dakota's NO_X BART determinations for MRYS 1 and 2 and LOS 2 on grounds explained elsewhere. To the degree that some of these comments extend to our FIP for CCS and AVS, EPA's evaluation of capital and annual expenses associated with implementation of the FIP shows such expenses to be justified by the degree of improvement in visibility in relationship to the cost of implementation.

We take our duty to estimate the cost of controls very seriously, and make every attempt to make a thoughtful and well informed determination. However, we do not consider a potential increase in electricity rates to be the most appropriate type of analysis for considering the costs of compliance in a BART determination. Nevertheless, our analysis indicates that the annual costs to CCS and AVS associated with our FIP will be relatively modest considering the size of the plants, and impacts to rate payers should be much lower than anticipated by commenters.

Comment: Commenter cited EPA's Clean Air Markets database, which states that North Dakota ranked #12 in SO_2 emissions and #19 in NO_X emissions. The commenter also provided the SO_2 and NO_X rankings for the seven North Dakota EGUs discussed in the SIP.

Response: We appreciate the commenter providing the SO_2 and NO_X rankings for North Dakota and its EGUs. We do not disagree with the information provided and acknowledge the data suggest the North Dakota plants rank relatively high in the amount of SO_2 and NO_X emissions compared to other states. However, we note that BART and RP determinations involve case-by-case determinations considering the relevant statutory factors, which do not include the relative emissions rankings.

Comment: Commenter requests that EPA set limits on ammonia slip where SNCR or SCR is required for BART.

Response: In Section 7.1.2 of the SIP, North Dakota concluded that ammonia is not a visibility impairing pollutant of concern as ammonia emissions (and associated regional haze impacts) from BART-eligible sources are negligible. We concur with this conclusion.

[69] The American Lung Association State of the Air report is available at *www.stateoftheair.org.*

Accordingly, there is no basis to set limits on ammonia slip to address concerns related to regional haze impacts. Nor is it necessary to set limits on ammonia slip to ensure compliance with NO_X emission limits because NO_X CEMS will be used.

J. Comments Requesting an Extension to the Public Comment Period

Comment: One commenter requested that the comment period be extended to December 21, 2011 and Governor Dalrymple and Senator Hoeven requested the time allotted for the public hearings be increased.

Response: The comment period for our proposal closed on November 21, 2011. We carefully considered the request for an extension to the comment period. We took into consideration how an extension might affect our ability to consider comments received on the proposed action and still comply with our consent decree deadlines. We do note that our October 13 and 14, 2011, public hearing in Bismarck, North Dakota was well attended and provided an opportunity for people to comment on our proposal. Also regarding the public hearings, we agreed to Governor Dalrymple's and Senator Hoeven's requests to extend the length of the public hearing and to allow as much time as needed for state representatives to present their comments.

K. Comments Generally in Favor of Our Proposal

Comment: Overall, we received more than 24,000 comment letters in support of our rulemaking from members representing various organizations, concerned citizens, and tribal members. These comments were received at the Public Hearing in Bismarck, North Dakota, by internet, and through the mail. Each of these commenters was generally in favor of portions of our proposed decision for North Dakota regional haze. These comments included comments urging us to require the most effective pollution control technology, SCR, at LOS 2, and MRYS 1 and 2 and additional emission reductions from CCS 1 and 2 and AVS 1 and 2. Some of these comments also discussed the detrimental health effects of haze pollution and the economic impacts of these health effects. Some of these comments urged us to keep or lower our proposed numeric limits on NO_X for MRYS and LOS 2 in our final decision. These letters also asked us to require other units at LOS, Heskett Station, and Stanton Station to modernize and reduce their air pollution impacts.

Response: We acknowledge the support of these commenters for our proposed action. We note that several of the control technology determinations and emissions limits supported by these commenters in the proposal have been changed in this final action based on the Minnkota BACT court decision and all of the information received during the comment period. Please see the docket associated with this action for additional detail. To the extent the comments asserted the need for more stringent controls, we address those comments in other responses.

L. Comments Generally Against Our Proposal

Comment: Various commenters generally stated they did not support the proposed rulemaking. Their reasons included: it will affect the town's economy, affect the coal power plant industry, electricity costs will increase, they have no direct health problems from actual emissions, direct and indirect jobs/businesses would be affected, North Dakota already meets air quality standards, that there will be no benefit to the community, that our decision relies on unproven technology, and that it will not result in noticeable visibility improvements.

We received three resolutions from cities in Minnesota, including Roseau, Big Falls, and Little Fork, which opposed our rulemaking. These resolutions included comments about the proposed FIP for SCR technology at MRYS, including comments about the high cost, that the technology had not been shown to work at similar plants, and that there would be no humanly perceptible visibility improvements over the State's plan. The resolutions also noted that Minnkota had already incurred significant costs for installing SNCR and contracting for renewable sources, and that these expenditures were resulting in rate increases.

We received petitions and mass mailer letters from nine rural power cooperative associations and over 3,000 comments generated through a Web site established by an organization named Partners for Affordable Energy. Comments from these letters and emails included the following: that Congress left the primary responsibility for SIPs with states, that states have superior knowledge of local conditions and needs, and that EPA's plan would provide imperceptible visibility benefits at huge costs. The comments also urged EPA to allow North Dakota to make its own decisions regarding its clean air programs.

Response: We acknowledge these general comments that opposed our proposed action. We provide responses that address these issues elsewhere in this action. We have made changes from our proposal, as noted elsewhere in this action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in detail in section C below, the FIP applies to only two facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the FIP applies to just two facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP that EPA is finalizing for purposes of the visibility prong of section 110(a)(2)(D)(i)(II) consists of the combination of the approval of the State's RH SIP submission and the Regional Haze FIP by EPA that adds additional controls to certain sources. The Regional Haze FIP that EPA is finalizing for purposes of the regional haze program consists of imposing federal controls to meet the BART requirement for NO_X emissions at one source in North Dakota, and imposing controls to meet the reasonable progress requirement for NO_X emissions at one additional source in North Dakota. The net result of these two simultaneous FIP actions is that EPA is proposing direct emission controls on selected units at only two sources. The sources in question are each large electric generating plants that are not owned by small entities, and therefore are not small entities. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states' measures to protect visibility established in the CAA and not fully meeting its obligation to adopt a SIP that meets the regional haze requirements under the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' We believe this rule does not have tribal implications, as specified in Executive Order 13175, and will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: *Protection of Children from Environmental Health*

Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions of NO_X, the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule limits emissions of NO_X from two facilities in North Dakota. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 7, 2012.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 2012. Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) as it promulgates a FIP under CAA section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze. Final Rule. (EPA–R08–OAR–2010–0406)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: March 1, 2012.

Lisa P. Jackson,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended by:
■ a. Adding to the table in paragraph (c) an entry entitled ''33–15–25 Regional Haze Requirements'' at the end of the table.
■ b. Revising the table in paragraph (d).
■ c. Adding to the table in paragraph (e)entries ''(23),'' ''(24),'' and ''(25)'' in numerical order at the end of the table.

The revisions and additions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
* * *	* * *	*	*	*
33–15–25 Regional Haze Requirements				
33–15–25–01	Definitions	1/1/07	4/6/12, [Insert **Federal Register** page number where the document begins.].	
33–15–25–02	Best available retrofit technology	1/1/07	4/6/12, [Insert **Federal Register** page number where the document begins.].	
33–15–25–03	Guidelines for best available retrofit technology determinations under the regional haze rule.	1/1/07	4/6/12, [Insert **Federal Register** page number where the document begins.].	
33–15–25–04	Monitoring, recordkeeping, and reporting.	1/1/07	4/6/12, [Insert **Federal Register** page number where the document begins.].	

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * * (d) * * *

Name of source	Nature of requirement	State effective date	EPA approval date and citation [3]	Explanations
Leland Olds Station Unit 1	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
	Air pollution control permit to construct for best available retrofit technology (BART), PTC10004.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Leland Olds Station Unit 2	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
	Air pollution control permit to construct for best available retrofit technology (BART), PTC10004.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Milton R. Young Station Unit 1	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
	Air pollution control permit to construct for best available retrofit technology (BART), PTC10007.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Milton R. Young Station Unit 2	Air pollution control permit to construct for best available retrofit technology (BART), PTC10007.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Coal Creek Station Unit 1	Air pollution control permit to construct for best available retrofit technology (BART), PTC10005.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	Excluding the NO_X BART emissions limits for Unit 1 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA disapproved.

Name of source	Nature of requirement	State effective date	EPA approval date and citation [3]	Explanations
Coal Creek Station Unit 2	Air pollution control permit to construct for best available retrofit technology (BART), PTC10005.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	Excluding the NO_X BART emissions limits for Unit 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA disapproved.
Stanton Station Unit 1	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
	Air pollution control permit to construct for best available retrofit technology (BART), PTC10006.	2/23/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Heskett Station Unit 1	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
Heskett Station Unit 2	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
	Air Pollution Control Permit to Construct, PTC10028.	7/22/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
Coyote Station Unit 1	Air Pollution Control Permit to Construct, PTC10008.	3/14/11	4/6/12, [Insert **Federal Register** page number where the document begins.].	
American Crystal Sugar at Drayton.	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
Tesoro Mandan Refinery	SIP Chapter 8, Section 8.3.1, Continuous Opacity Monitoring for Fluid Bed Catalytic Cracking Units: Tesoro Refining and Marketing Co., Mandan Refinery.	2/27/07	5/27/08, 73 FR 30308.	

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * * (e) * * *

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
*	* *	*	* *	*
(23) North Dakota State Implementation Plan for Regional Haze.	Statewide	Submitted: 3/3/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	Excluding portions of the following: Sections 7.4, 9.5, 9.7, and 10.6, and Appendices B.2, and D.2, and all of Appendix A.4, because EPA disapproved the NO_X BART determination for Coal Creek Station Units 1 and 2, the reasonable progress determination for Antelope Valley Station Units 1 and 2 regarding NO_X controls, the reasonable progress goals, and parts of the long-term strategy, and because the provisions applicable to Coyote Station were superseded by a later submittal.
(24) North Dakota State Implementation Plan for Regional Haze Supplement No. 1.	Statewide	Submitted: 7/27/10	4/6/12, [Insert **Federal Register** page number where the document begins.].	
(25) North Dakota State Implementation Plan for Regional Haze Amendment No. 1.	Statewide	Submitted: 7/28/11	4/6/12, [Insert **Federal Register** page number where the document begins.].	Including only Section 10.6.1.2, Appendix A.4, and introductory elements that pertain to the NO_X requirements for Coyote Station; excluding all other portions of the submittal.

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

■ 3. Section 52.1825 is added as follows:

§ 52.1825 Federal Implementation Plan for Regional Haze.

(a) *Applicability.* This section applies to each owner and operator of the following coal-fired electric generating units (EGUs) in the State of North Dakota: Coal Creek Station, Units 1 and 2; Antelope Valley Station, Units 1 and 2.

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

(1) *Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the EGU. It is not necessary for fuel to be combusted for the entire 24-hour period.

(2) *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

(3) *NO_X* means nitrogen oxides.

(4) *Owner/operator* means any person who owns or who operates, controls, or supervises an EGU identified in paragraph (a) of this section.

(5) *Unit* means any of the EGUs identified in paragraph (a) of this section.

(c) *Emissions limitations.* (1) The owners/operators subject to this section shall not emit or cause to be emitted NO_X in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu), averaged over a rolling 30-day period:

Source name	NO_X Emission limit (lb/MMBtu)
Coal Creek Station, Units 1 and 2.	0.13, averaged across both units.
Antelope Valley Station, Unit 1.	0.17.
Antelope Valley Station, Unit 2.	0.17.

(2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* The owners and operators of Coal Creek Station shall comply with the emissions limitation and other requirements of this section within five (5) years of the effective date of this rule, unless otherwise indicated in specific paragraphs. The owners and operators of Antelope Valley Station shall comply with the emissions limitations and other requirements of this section as expeditiously as practicable, but no later than July 31, 2018, unless otherwise indicated in specific paragraphs.

(e) *Compliance determination*—(1) *CEMS.* At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the

emission limitations in paragraph (c) of this section for each unit.

(2) *Method.* (i) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_X concentration in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each boiler operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day and the previous 29 successive boiler operating days.

(ii) An hourly average NO_X emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by both the NO_X pollutant concentration monitor and the diluent monitor (O_2 or CO_2).

(iii) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Recordkeeping.* Owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

(3) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(4) Any other records required by 40 CFR part 75.

(g) *Reporting.* All reports under this section shall be submitted to the Director, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, Mail Code 8ENF–AT, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

(1) Owner/operator shall submit quarterly excess emissions reports no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) Owner/operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, any CEMS repairs or adjustments, and results of any CEMS performance tests required by 40 CFR part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the report.

(h) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(i) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(j) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

[FR Doc. 2012–6586 Filed 4–5–12; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing of the Miami Blue Butterfly as Endangered Throughout Its Range; Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly in Coastal South and Central Florida; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0043; 4500030113]

RIN 1018–AX83

Endangered and Threatened Wildlife and Plants; Listing of the Miami Blue Butterfly as Endangered Throughout Its Range; Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly in Coastal South and Central Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), are listing the Miami blue butterfly *(Cyclargus thomasi bethunebakeri),* as endangered under the Endangered Species Act of 1973, as amended (Act). We have determined that designation of critical habitat for the Miami blue butterfly is not prudent at this time. We also are listing the cassius blue butterfly *(Leptotes cassius theonus),* ceraunus blue butterfly *(Hemiargus ceraunus antibubastus),* and nickerbean blue butterfly *(Cyclargus ammon)* as threatened due to similarity of appearance to the Miami blue in coastal south and central Florida, and establishing a special rule under section 4(d) of the Act for these three species.

DATES: This final rule becomes effective on April 6, 2012.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/verobeach/.* Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559; telephone 772–562–3909; facsimile 772–562–4288.

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **ADDRESSES** above). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of: (1) A final rule to list the Miami blue butterfly *(Cyclargus thomasi bethunebakeri)* as endangered; and (2) a special rule pursuant to section 4(d) of the Act to list the cassius blue butterfly *(Leptotes cassius theonus),* ceraunus blue butterfly *(Hemiargus ceraunus antibubastus),* and nickerbean blue butterfly *(Cyclargus ammon)* as threatened due to similarity of appearance to the Miami blue in portions of their ranges.

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. On August 10, 2011, we published emergency and proposed rules to list the Miami blue butterfly as endangered. In those documents we explained that the subspecies currently exists in a fraction of its historical range and faces numerous threats, and therefore qualifies for listing. This rule finalizes the protection proposed for the subspecies, following careful consideration of all comments received during the public comment period. One of the principal threats to the subspecies is collection for commercial purposes. For this reason, we are also prohibiting the collection of the cassius, ceraunus, and nickerbean blue butterflies, three species which are very similar in appearance to the Miami blue butterfly, within the historical range of the Miami blue.

The basis for our action. Under the Act, a species may be determined to be endangered or threatened based on any of five factors: (1) Destruction, modification, or curtailment of its habitat or range; (2) Overutilization; (3) Disease or predation; (4) Inadequate existing regulations; or (5) Other natural or manmade factors. The Miami blue is endangered due to four of these five factors. Section 4(e) of the Act also allows for the extension of protections to similar species under certain circumstances.

Peer reviewers support our methods. We solicited opinions from knowledgeable individuals with scientific expertise to review the technical assumptions, analyses, adherence to regulations, and whether or not we had used the best available information in our proposed listing rule for the subspecies. We received 8 peer review responses, and 2 collaborative responses from State agencies. These peer reviewers generally concurred with the basis for listing the Miami blue, and provided additional information, clarifications, and suggestions to improve this final listing determination.

Acronyms Used in This Document

We use many acronyms throughout this final rule. To assist the reader, we provide a list of these acronyms here for easy reference:

AME = Allyn Museum of Entomology
BHSP = Bahia Honda State Park
BNP = Biscayne National Park
CCSP = U.S. Climate Change Science Program
CITES = Convention on International Trade in Endangered Species
DJSP = Dagny Johnson Key Largo Hammock Botanical State Park
ENP = Everglades National Park
FCCMC = Florida Coordinating Council on Mosquito Control
FDEP = Florida Department of Environmental Protection
FKMCD = Florida Keys Mosquito Control District
FLMNH = Florida Museum of Natural History
FPS = Florida Park Service
FWC = Florida Fish and Wildlife Conservation Commission
GWHNWR = Great White Heron National Wildlife Refuge
INRMP = Integrated Natural Resource Management Plan
IPCC = Intergovernmental Panel on Climate Change
IRC = Institute for Regional Conservation
KWNWR = Key West National Wildlife Refuge
MIT = Massachusetts Institute of Technology
NABA = North American Butterfly Association
NAS = Naval Air Station Key West
NCSU = North Carolina State University
NEP = nonessential experimental populations
NKDR = National Key Deer Refuge
TNC = The Nature Conservancy
UF = University of Florida
UN = United Nations
USDJ = U.S. Department of Justice
USGS = U.S. Geological Survey

Previous Federal Actions

Federal actions for the Miami blue butterfly prior to August 10, 2011, are outlined in our emergency rule (76 FR 49542), which was published on that date. Publication of the proposed rule (76 FR 49408), concurrently published on that date, opened a 60-day comment period, which closed on October 11, 2011. The emergency rule provides protection for the Miami blue, ceraunus blue, nickerbean blue, and cassius blue butterflies for a 240-day period, ending on April 6, 2012. Because of this time constraint, and the threat of collection of these species if the emergency rule expires before the proposed rule is finalized (see Factor B, Overutilization for commercial, recreational, scientific, or educational purposes), this rule does not have the standard 30-day period

before becoming effective. It becomes effective upon the expiration of the emergency rule, April 6, 2012.

Public Comments

We received comments from the public on the proposed listing action, including the proposed listing of three similar butterflies due to similarity of appearance and our determination that designation of critical habitat is not prudent. In this rule, we respond to these issues in a single comment section.

Background

The Miami blue is a small, brightly colored butterfly approximately 0.8 to 1.1 inches (1.9 to 2.9 centimeters [cm]) in length (Pyle 1981, p. 488), with a forewing length of 0.3 to 0.5 inches (8.0 to 12.5 millimeters) (Minno and Emmel 1993, p. 134). Wings of males are blue above (dorsally), with a narrow black outer border and white fringes; females are bright blue dorsally, with black borders and an orange/red and black eyespot near the anal angle of the hindwing (Comstock and Huntington 1943, p. 98; Minno and Emmel 1993, p. 134). The underside is grayish, with darker markings outlined with white and bands of white wedges near the outer margin. The ventral hindwing has two pairs of eyespots, one of which is capped with red; basal and costal spots on the hindwing are black and conspicuous (Minno and Emmel 1993, p. 134). The winter (dry season) form is much lighter blue than the summer (wet season) form and has narrow black borders (Opler and Krizek 1984, p. 112). Seasonal wing pattern variation may be caused by changes in humidity, temperature, or length of day (Pyle 1981, p. 489). Miami blue larvae are bright green with a black head capsule, and pupae vary in color from black to brown (Minno and Emmel 1993, pp. 134–135).

The Miami blue is similar in appearance to three other sympatric (occupying the same or overlapping geographic areas, without interbreeding) butterfly species that occur roughly in the same habitats: cassius blue *(Leptotes cassius theonus),* ceraunus blue *(Hemiargus ceraunus antibubastus),* and nickerbean blue *(Cyclargus ammon).* The Miami blue is slightly larger than the ceraunus blue (Minno and Emmel 1993, p. 134), and the ceraunus blue has a different ventral pattern and flies close to the ground in open areas (Minno and Emmel 1994, p. 647). The cassius blue often occurs with the Miami blue, but has dark bars rather than spots on the undersides of the wings (Minno and Emmel 1994, p. 647). The Miami blue can be distinguished from the ceraunus blue and cassius blue by its very broad white ventral submarginal band, the dorsal turquoise color of both sexes, and the orange-capped marginal eyespot on the hind wings (Opler and Krizek 1984, p. 112). The nickerbean blue is also similar to the Miami blue in general appearance but is considerably smaller; it has three black spots across the basal hindwing, while the Miami blue has four (Calhoun *et al.* 2002, p. 15). The larvae and pupae of the nickerbean blue closely resemble the Miami blue (Calhoun *et al.* 2002, p. 15).

In a comparison of Miami blue butterfly specimens within the Florida Museum of Natural History (FLMNH) collection, Saarinen (2009, pp. 42–43) found a significant difference in forewing length between males and females, with males having shorter forewings than females. However, no significant differences were found between forewing length in comparing wet and dry seasons, decade of collection, seven different regions, or between eastern mainland and Keys specimens (Saarinen 2009, pp. 42–43). No seasonal size differences were found between the mainland populations and those in the Keys (Saarinen 2009, p. 43).

In a comparison of body size in a recent Miami blue population, females were significantly larger than males, and individuals sampled in the wet season were also significantly larger than in the dry season (Saarinen 2009, p. 43). In a comparison of recent Bahia Honda State Park (BHSP) individuals with specimens from historical collections (FLMNH data), BHSP individuals were significantly larger than historical specimens, females from BHSP were significantly larger than historical female specimens, and BHSP adults measured in wet seasons were larger than those sampled in wet seasons in museum collections (Saarinen 2009, p. 43). Saarinen (2009, p. 47) suggested that perhaps larger adults were selected for over time with larger adults being more capable of dispersing and finding food and mates. Limited food resources during larval development or abrupt termination of availability of food in the last larval instar can lead to early pupation and a smaller adult size (T.C. Emmel, pers. comm., as cited in Saarinen 2009, p. 47). It is possible that differences in host plant (*e.g.,* nutrition) and age of specimens (*e.g.,* freshness) may also be factors when comparing body size between recent specimens and those from historical collections.

Taxonomy

The Miami blue belongs to the family Lycaenidae (Leach), subfamily Polyommatinae (Swainson). The species *Hemiargus thomasi* was originally described by Clench (1941, pp. 407–408), and the subspecies *Hemiargus thomasi bethunebakeri* was first described by Comstock and Huntington (1943, p. 97). Although some authors continue to use *Hemiargus,* Nabokov (1945, p. 14) instituted *Cyclargus* for some species, which has been supported by more recent research (Johnson and Balint 1995, pp. 1–3, 8–11, 13; Calhoun *et al.* 2002, p. 13; K. Johnson, Florida State Collection of Arthropods, *in litt.* 2002). There are differences in the internal genitalic structures of the genera *Hemiargus* and *Cyclargus* (Johnson and Balint 1995, pp. 2–3, 11; K. Johnson, *in litt.* 2002). Kurt Johnson (*in litt.* 2002), who has published most of the existing literature since 1950 on the blue butterflies of the tribe Polyommatini, reaffirmed that *thomasi* belongs in the genus *Cyclargus* (Nabokov 1945, p. 14), not *Hemiargus.* Accordingly, *Cyclargus thomasi bethunebakeri* (Pelham 2008, p. 21) and its taxonomic standing is accepted (Integrated Taxonomic Information System 2011, p. 1).

In 2003, questions about the taxonomic identity of Miami blues from BHSP were raised by a few individuals. To address these questions, the Service sent two pairs (male and female) of adult specimens to three independent taxonomists and reviewers (Dr. Jacqueline Miller, Associate Curator, Allyn Museum of Entomology (AME), FLMNH; Dr. Paul Opler, Colorado State University; and John Calhoun, Museum of Entomology, Florida State Collection of Arthropods) for verification. To avoid harm to the wild population, scientists examined moribund adults from a captive colony generated from individuals taken from BHSP. Each reviewer independently confirmed through various means (*e.g.,* comparison with confirmed specimens, dissection and examination of genitalia) that the identities of the adult specimens examined were *Cyclargus thomasi bethunebakeri* (J. Miller, *in litt.* 2003; P. Opler, *in litt.* 2003; J. Calhoun, *in litt.* 2003a). We received an additional confirmation from Lee Miller, Curator (AME, FLMNH), stating that the identities of the adult specimens examined were *Cyclargus thomasi bethunebakeri* (L. Miller, *in litt.* 2003). Taxonomic verification by genitalic dissection of the Miami blue at Key West National Wildlife Refuge (KWNWR) has not occurred, but preliminary molecular evidence has confirmed that they are the same taxon (E.V. Saarinen, unpub. data, as cited in

Saarinen 2009, p. 18; E. Saarinen, *in litt.* 2011).

Life History

Like all butterflies, the Miami blue undergoes complete metamorphosis, with four life stages (egg, caterpillar or larva, pupa or chrysalis, and adult). The generation time is approximately 30–40 days (Carroll and Loye 2006, p. 19; Saarinen 2009, pp. 22, 76) and similar for both males and females (Trager and Daniels 2011, p. 35). Although a single Miami blue female can lay 300 eggs, high mortality may occur in the immature larval stages prior to adulthood (T. Emmel, University of Florida [UF], pers. comm. 2002). Trager and Daniels (2011, p. 40) indicated that larger, longer-lived females demonstrate a higher fecundity. Reported host plants are blackbead (*Pithecellobium* spp.), nickerbean (*Caesalpinia* spp.), balloonvine (*Cardiospermum* spp.), and presumably *Acacia* spp. (Kimball 1965, p. 49; Lenczewski 1980, p. 47; Pyle 1981, p. 489; Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18; Cannon *et al.* 2010, p. 851). In addition, Rutkowski (1971, p. 137) observed a female laying one egg just above the lateral bud on snowberry *(Chiococca alba).* Eggs are laid singly near the base of young pods or just above the lateral buds of balloonvine and the flowers of leguminous trees (Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 134); flower buds and young tender leaves of legumes are preferred laying sites (Minno and Minno 2009, p. 78; M. Minno, pers. comm. 2010).

On nickerbean plants (*Caesalpinia* spp.), females lay eggs on developing shoots, foliage, and flower buds (Saarinen 2009, p. 22; Trager and Daniels 2011, p. 35). Oviposition occurs throughout the day with females often seeking terminal growth close to the ground (<3.3 feet [<1 meter]) or in locations sheltered from the wind (Emmel and Daniels 2004, p. 13). Eggs are generally laid singly, but may be clustered on developing leaves, shoot tips, and flower buds (Saarinen 2009, p. 22). After several days of development, larvae chew out of eggs and develop through four instar stages, with total larval development time lasting 3 to 4 weeks, depending upon temperature and humidity (Saarinen 2009, p. 22). Fourth instar larvae pupate in sheltered or inconspicuous areas, often underneath leaf whorls or bracts (Saarinen 2009, p. 22). Adult butterflies eclose (emerge) after 5 to 8 days, depending on temperature and humidity (Saarinen 2009, p. 22).

On blackbead plants, females lay eggs on flower buds and emerging leaves (Cannon *et al.* 2010, p. 851; Trager and Daniels 2011, p. 35). Oviposition on, or larval consumption of, mature blackbead leaves was not observed (Cannon *et al.* 2010, p. 851). Thus, Cannon *et al.* (2010, p. 851) suggested that abundance may be limited by the availability of young blackbead leaves and buds for egg-laying, even if abundant suitable nectar sources (see *Habitat*) are available year-round.

On balloonvine, females lay single eggs near fruit (capsules) (Carroll and Loye 2006, p. 18). Newly hatched larvae chew distinctive holes through the outer walls of the capsules to access seeds (Minno and Emmel 1993, p. 134). After consuming seeds within the natal capsule, larvae must crawl to a sequence of two or three balloons before growing large enough to pupate. Attending ants follow through the same holes (see Interspecific relationships below). Miami blues were also observed to commonly pupate within mature capsules (sometimes with ants in attendance within the capsule) (Carroll and Loye 2006, p. 20).

The Miami blue has been described as having multiple, overlapping broods year-round (Pyle 1981, p. 489). Adults can be found every month of the year (Opler and Krizek 1984, pp. 112–113; Minno and Emmel 1993, p. 135; 1994, p. 647; Emmel and Daniels 2004, p. 9; Saarinen 2009, p. 22). Opler and Krizek (1984, pp. 112–113) indicated one long winter generation from December to April, during which time the adults are probably in reproductive diapause (a period in which growth, development, and physiological activity is suspended or diminished); a succession of shorter generations was thought to occur from May through November, the exact number of which is unknown. Glassberg *et al.* (2000, p. 79) described the Miami blue as having occurred all year, with three or more broods. Researchers have noted a marked decrease of adults from December to early February at BHSP, indicative of a short diapause (Emmel and Daniels 2003, p. 3; 2004, p. 9). Saarinen also noted that the life cycle at BHSP slowed in winter months and suspected a slight diapause (E.V. Saarinen and J.C. Daniels, unpub. data, as cited in Saarinen 2009, p. 22). Conversely, Minno (pers. comm. 2010) noted that there have been records of adults in December and January and suggested that this tropical butterfly may not have a winter diapause, but rather, emergence may be delayed by cold temperatures in some years. Salvato and Salvato (2007, p. 163) and Cannon *et al.* (2010, pp. 849–850) also reported numerous adults at BHSP and KWNWR, respectively, during winter months.

Information on adult lifespan is limited. Based on field studies, adult Miami blues have been found to live 9 days, but most adults are thought to live only a few days (J. Daniels, UF, pers. comm. 2003a, 2003b). In general, adults may survive less than a week in the wild; there are approximately 8–10 generations per year (Saarinen *et al.* 2009a, p. 31). Generations are not completely discrete due to the variance in development time of all life stages (Saarinen *et al.* 2009a, p. 31). Adult longevity is not well understood. Some lycaenids have the ability to survive longer than mark-recapture studies indicate (Johnson *et al.* 2011, p. 8). For example, the Palos Verdes blue (*Glaucopsyche lygdamus palosverdesensis*), thought to live 10 days or less in the field, has been documented to have a life span of up to 38 days in the laboratory (T. Longcore, University of California, *in litt.* 2011; Johnson *et al.* 2011, p. 8). Additional field studies are needed to better ascertain adult Miami blue longevity in the wild.

Range size and dispersal—At this time, it is unclear how far adult Miami blues can disperse and the mechanisms for dispersal (*i.e.,* active [flight] or passive [wind-assisted]). Initial mark-recapture studies of the butterfly indicate they are nonmigratory and appear to be sedentary (Emmel and Daniels 2004, p. 6). Based on mark-recapture work conducted in 2002–2003, recaptured adults (N=39) moved an average of 6.53 +/− 11.68 feet (2.0 +/− 3.6 meters), four individuals moved between 25 and 50 feet (7.6 and 15.2 meters), and only three individuals moved more than 50 feet (15.2 meters) over a few days (Emmel and Daniels 2004, pp. 6, 32–38). Few individuals were found to move between the lower and upper walkway locations of the south end colony sites at BHSP (approximately 100 feet [30.5 meters]); no movement between any of the smaller individual, isolated colony sites was recorded (Emmel and Daniels 2004, p. 6). However, Saarinen (2009, pp. 73, 78–79) found that genetic exchange between colonies occurred at BHSP and noted that small habitat patches may be crucial in providing links between subpopulations in an area.

Interspecific relationships—As in many lycaenids worldwide (Pierce *et al.* 2002, p. 734), Miami blue larvae associate with ants (Emmel 1991, p. 13; Minno and Emmel 1993, p. 135; Carroll and Loye 2006, pp. 19–20; Trager and Daniels 2011, p. 35) in at least four

genera of ants in three subfamilies of Formicidae (Saarinen and Daniels 2006, p. 71; Saarinen 2009, pp. 131, 133). Miami blues using nickerbean at BHSP and Everglades National Park (ENP) (reintroduced individuals) were variously tended by *Camponotus floridanus, C. planatus, Crematogaster ashmeadi, Forelius pruinosus,* and *Tapinoma melanocephalum* (Saarinen and Daniels 2006, p. 71; Saarinen 2009, pp. 131, 138). *C. floridanus* was the primary ant symbiont, commonly found tending larvae; other ant species were encountered less often (Saarinen and Daniels 2006, p. 70; Saarinen 2009, pp. 131–132). Liquid (honeydew) exuded from the butterfly's dorsal nectary organ (honey gland) was actively imbibed by all species of ants (Saarinen and Daniels 2006, p. 70; Saarinen 2009, p. 132).

Late Miami blue instars were always found in association with ants, but early instars, prepupae, and pupae were frequently found without ants present (Saarinen and Daniels 2006, p. 70). *Forelius pruinosus* and *Tapinoma melanocephalum* were observed to derive honeydew from Miami blues they tended, but were not observed to actively protect them from any predator (Saarinen and Daniels 2006, p. 71; Saarinen 2009, p. 133). However, the presence of ants in the vicinity of larvae may potentially deter predators (Saarinen and Daniels 2006, pp. 71, 73; Saarinen 2009, p. 133; Trager and Daniels 2009, p. 480). Two additional ants, *Paratrechina longicornis* and *P. bourbonica,* have been identified as potential associates of the Miami blue (Saarinen and Daniels 2006, pp. 70–71; Saarinen 2009, pp. 131, 138). *P. longicornis* was found near Miami blue larvae and appeared to tend them during brief encounters; *P. bourbonica* tended another lycaenid, martial scrub-hairstreak (*Strymon martialis*) at BHSP (Saarinen and Daniels 2006, p. 70). Cannon *et al.* (2007, p. 16) also observed two ant species attending Miami blues on KWNWR. Based on photographs, the ants appeared to be *Camponotus inaequalis* and *P. longicornis. C. planatus* was observed on blackbead.

In the 1980s, Miami blue larvae that fed on balloonvine in the upper Keys were also tended by ants (*Camponotus floridanus* and *C. planatus*) (Carroll and Loye 2006, pp. 19–20). Carroll and Loye (2006, p. 20) found that *Camponotus* spp. raised with Miami blue larvae lived longer than ants raised with larvae of other lycaenid species or without any food source, demonstrating that larval secretions benefit ants.

More recently, Trager and Daniels (2009, p. 479) most commonly found *Camponotus floridanus* and *C. planatus* associated with wild and recently released Miami blue larvae. In a comparison of Miami blue larvae raised with and without ants, no effect of ant presence was found on any measurements of larval performance (*e.g.,* age at pupation, pupal mass, length of pupation, total time as an immature) (Trager and Daniels 2009, p. 480). Miami blue larval development was found to be similar to that of other conspecific lycaenid species not tended by ants (Trager and Daniels 2009, p. 480). Although the relationships are not completely understood, it appears that Miami blue larvae may receive some benefits from tending ants (*e.g.,* potential defense from predators) without much, if any, costs incurred.

Habitat

The Miami blue is a coastal butterfly reported to occur in openings and around the edges of hardwood hammocks (forest habitats characterized by broad-leaved evergreens), and in other communities adjacent to the coast that are prone to frequent natural disturbances (*e.g.,* coastal berm hammocks, dunes, and scrub) (Opler and Krizek 1984, p. 112; Minno and Emmel 1994, p. 647; Emmel and Daniels 2004, p. 12). It also has been reported to use tropical pinelands (Minno and Emmel 1993, p. 134) and open sunny areas along trails (Pyle 1981, p. 489). In the Keys, it was most abundant near disturbed hammocks where weedy flowers provided nectar (Minno and Emmel 1994, p. 647). It also occurred in pine rocklands (fire-dependent slash pine community with palms and a grassy understory) on Big Pine Key (Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18) and elsewhere in Monroe and Miami-Dade Counties. In Miami-Dade County, it occurred locally inland, sometimes in abundance (M. Minno, pers. comm. 2010). Within KWNWR, all occupied areas had coastal strands and dunes fronted by beaches (Cannon *et al.* 2007, p. 13; Cannon *et al.* 2010, p. 851).

Larval host plants include blackbead, nickerbean, balloonvine, and presumably *Acacia* spp. (Dyar 1900, pp. 448–449, Kimball 1965, p. 49; Lenczewski 1980, p. 47; Pyle 1981, p. 489; Calhoun *et al.* 2002, p. 18). Gray nickerbean *(Caesalpinia bonduc)* is widespread and common in coastal south Florida. Following disturbances, it can dominate large areas (K. Bradley, The Institute for Regional Conservation [IRC], pers. comm. 2002). Gray nickerbean has been recorded as far north as Volusia County on the east coast, matching the historical range of the Miami blue, and Levy County on the west coast (J. Calhoun, pers. comm. 2003b). The Miami blue is also reported to use peacock flower (*Caesalpinia pulcherrima*) (Matteson 1930, pp. 13–14; Calhoun *et al.* 2002, p. 18), a widely cultivated exotic that occurs in disturbed uplands and gardens (Gann *et al.* 2001–2012, p. 1). Rutkowski (1971, p. 137) and Opler and Krizek (1984, p. 113) reported the use of snowberry. Brewer (1982, p. 22) reported the use of cat's paw blackbead *(Pithecellobium unguis-cati)* on Sanibel Island in Lee County.

Prior to the 1970s, documented host plants for the butterfly were nickerbean and blackbead (J. Calhoun, pers. comm. 2003b). Balloonvine (*Cardiospermum* spp.) was not reported as a host plant until the 1970s, when these plants seemed to have become common in extreme southern Florida (J. Calhoun, pers. comm. 2003b). Subsequently, balloonvine (*Cardiospermum halicacabum*), an exotic species in Florida, was the most frequently reported host plant for Miami blue (*e.g.,* Lenczewski 1980, p. 47; Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 134; 1994, p. 647; Calhoun *et al.* 2002, p. 18). However, Carroll and Loye (2006, pp. 13–15) corrected ''the common view that a principal host plant, balloonvine, is an exotic weed.'' They found that published reports of Miami blue larvae on balloonvine all identified the host as *C. halicacabum* and stated that the butterfly was instead dependent upon a declining native, *C. corindum* (Carroll and Loye 2006, pp. 14, 23). Bradley (pers. comm. 2002) also confirmed that *C. halicacabum* does not occur in the Keys, noting that the native balloonvine (*C. corindum*) is relatively common and widespread in the Keys and has been commonly mistaken as *C. halicacabum* in the Keys and other sites in south Florida.

Calhoun (pers. comm. 2003b) suggested that the Miami blue may simply utilize whatever acceptable hosts are available under suitable conditions. According to Calhoun (pers. comm. 2003b), a review of the historical range of the butterfly and its host plants suggests balloonvine was a more recent larval host plant and temporarily surpassed nickerbean as the primary host plant. As native coastal habitats were destroyed, balloonvine readily invaded disturbed environments, and the Miami blue used what was most commonly available. Minno (pers. comm. 2010) suggested that the Miami blue used balloonvine on Key Largo and Plantation Key extensively in the 1970s through the 1990s, noting that nickerbean, blackbead, and perhaps

other hosts were also probably used, but not documented.

The Miami blue metapopulation (series of small populations that have some level of interaction) at KWNWR was found to rely upon Florida Keys blackbead as the singular host plant (Cannon *et al.* 2007, p. 1; Cannon *et al.* 2010, pp. 851–852). Blackbead was also an important nectar plant when in flower. High counts of Miami blues at KWNWR were generally associated with the emergence of flowers and new leaves on blackbead (Cannon *et al.* 2007, pp. 14–15; Cannon *et al.* 2010, pp. 851–852). All sites that supported Miami blues contained blackbead (Cannon *et al.* 2007, p. 6; Cannon *et al.* 2010, p. 851). Limited abundance of blackbead within select areas of KWNWR was thought to limit abundance of the Miami blue (Cannon *et al.* 2007, p. 10; Cannon *et al.* 2010, p. 850). At BHSP, the Miami blue was closely associated with gray nickerbean, but also used blackbead (M. Minno, pers. comm. 2010). In KWNWR, gray nickerbean was rare, with only a few small plants on Boca Grande Key and the Marquesas Keys (Cannon *et al.* 2010, p. 851).

Adult Miami blues have been reported to feed on a wide variety of nectar sources, including Spanish needles (*Bidens alba*), Leavenworth's tickseed (*Coreopsis leavenworthi*), scorpionstail (*Heliotropium angiospermum*), turkey tangle fogfruit or capeweed (*Lippia nodiflora*), buttonsage (*Lantana involucrata*), snow squarestem (*Melanthera nivea* [*M. aspera*]), blackbead, Brazilian pepper (*Schinus terebinthifolius*), false buttonweed (*Spermacoce* spp.), and seaside heliotrope (*Heliotropium curassavicum*) (Pyle 1981, p. 489; Opler and Krizek 1984, p. 113; Minno and Emmel 1993, p. 135; Emmel and Daniels 2004, p. 12). Emmel and Daniels (2004, p. 12) reported that the Miami blue uses a variety of flowering plant species in the Boraginaceae, Asteraceae, Fabaceae, Polygonaceae, and Verbenaceae families for nectar. Cannon *et al.* (2010, p. 851) found the butterfly uses nine plant species as nectar sources within KWNWR, including: blackbead, snow squarestem, coastal searocket (*Cakile lanceolata*), black torch (*Erithalis fruticosa*), yellow joyweed (*Alternanthera flavescens*), bay cedar (*Suriana maritime*), sea lavender (*Argusia gnaphalodes*), seaside heliotrope, and sea purslane (*Sesuvium portulacastrum*).

Nectar sources must be near potential host plants since the butterflies are presumably sedentary and may not travel between patches of host and nectar sources (Emmel and Daniels 2004, p. 13). This may help explain the absence of the Miami blue from areas in which host plants are abundant and nectar sources are limited (J. Calhoun, pers. comm. 2003b). Emmel and Daniels (2004, p. 13) argued that it is potentially critical that sufficient available adult nectar sources be directly adjacent to host patches and also important that a range of potential nectar sources be available in the event one plant species goes out of flower or is adversely impacted by environmental factors. Cannon *et al.* (2010, p. 851) suggested that the growth stage of blackbead, coupled with abundant nectar from herbaceous plants, likely influenced Miami blue abundance; the highest counts occurred when blackbead was flowering profusely and producing new leaves.

Historical Distribution

The Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) is endemic to Florida with additional subspecies occurring in the Caribbean (Smith *et al.* 1994, p. 129; Hernandez 2004, p. 100; Saarinen 2009, pp. 18–19, 28). Field guides and other sources differ as to whether *C. thomasi bethunebakeri* occurs in the Bahamas. Clench (1963, p. 250), who collected butterflies in the West Indies, indicated that the subspecies occurred only in Florida. Riley (1975, p. 110) and Calhoun *et al.* (2002, p. 13) indicated that the Miami blue of Florida rarely occurs as a stray in the Bahamas. Minno and Emmel (1993, p. 134; 1994, p. 647) and Calhoun (1997, p. 46) considered the Miami blue to occur only in Florida (endemic to Florida, with other subspecies found in the Bahamas and Greater Antilles). Smith *et al.* (1994, p. 129) indicated that the Miami blue occurs in southern Florida, but noted it has been recorded from the Bimini Islands in the Bahamas. However, in a recent comprehensive study of museum specimens, Saarinen (2009, p. 28) found no specimens in current museum holdings to verify this. Overall, the majority of historical records pertaining to this subspecies' distribution are dominated by Florida occurrences, with any peripheral occurrences in the Bahamas possibly being ephemeral in nature.

Although information on distribution is somewhat limited, it is clear that the historical range of the Miami blue has been significantly reduced. The type series (*i.e.,* the original set of specimens on which the description of the species is based) contains specimens ranging from Key West up the east coast to Volusia County (Comstock and Huntington 1943, p. 98; J. Calhoun, pers. comm., 2003b). Opler and Krizek (1984, p. 112) showed its historical range as being approximately from Tampa Bay and Cape Canaveral southward along the coasts and through the Keys. It has also been collected in the Dry Tortugas (Forbes 1941, pp. 147–148; Kimball 1965, p. 49; Glassberg and Salvato 2000, p. 2). Lenczewski (1980, p. 47) noted that it was reported as extremely common in the Miami area in the 1930s and 1940s. Calhoun *et al.* (2002, p. 17) placed the historical limits of the subspecies' northern distribution at Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys (west of Key West).

The Miami blue was most common on the southern mainland and the Keys, especially Key Largo and Big Pine Key (Calhoun *et al.* 2002, p. 17) and other larger keys with hardwood hammock (Monroe County) (M. Minno, pers. comm. 2010). The subspecies was recorded on at least 10 islands of the Keys (Adams Key, Big Pine Key, Elliott Key, Geiger Key, Key Largo, Lignumvitae Key, Old Rhodes Key, Plantation Key, Stock Island, Sugarloaf Key) (Minno and Emmel 1993, p. 134). On the Gulf coast, it was reportedly more localized and tended to occur on more southerly barrier islands (J. Calhoun, pers. comm. 2003b). According to Calhoun *et al.* (2002, p. 17), the Miami blue occupied areas on the barrier islands of Sanibel, Marco, and Chokoloskee, along the west coast into the 1980s (based upon Brewer 1982, p. 22; Minno and Emmel 1994, pp. 647–648). Lenczewski (1980, p. 47) reported that the Miami blue historically occurred at Chokoloskee, Royal Palm (Miami-Dade County), and Flamingo (Monroe County) within ENP, but that the subspecies has not been observed in ENP since 1972.

Based upon examination of specimens from museum collections (N = 689), Saarinen (2009, pp. 42, 55–57) found a large, primarily coastal, geographic distribution for the butterfly. Most specimens from an 11-county area from 1900 to 1990 were collected in Miami-Dade and Monroe Counties (Saarinen 2009, pp. 42, 58). Records from Miami-Dade County (N = 212) were most numerous in the 1930s and 1940s; records from Monroe County (N = 387) (including all of the Florida Keys) were most numerous in the 1970s (Saarinen 2009, pp. 42, 58). Saarinen (2009, p. 47) was not able to quantify issues of collector bias and noted that collecting restrictions, inaccessibility of certain islands, and targeted interest in certain areas may have been factors influencing the relative abundance (and distribution) of specimens collected. For example, it is unclear whether Key

Largo represented a ''central hotspot,'' a spot simply heavily visited by lepidopterists, or both (Saarinen 2009, p. 47). Still, it is clear that specimens were common in museum collections from the early 1900s to the 1980s, suggesting that the butterfly was abundant, at least in local patches, during this time period (Saarinen 2009, p. 46). This is consistent with the work of Carroll and Loye (2006, pp. 15–18), who, in a compilation of location data for specimens (N = 209), found that most collections were from the Upper Keys; those from peripheral sites were generally less recent and only single specimens. Examination of museum records further verified the Miami blue's wide distribution in southern Florida through time (Carroll and Loye 2006, pp. 15–18; Saarinen 2009, p. 46).

By the 1990s, very few Miami blue populations were known to persist, and the butterfly had not been seen on the western Florida coast since 1990, where it was last recorded on Sanibel Island (Calhoun *et al.* 2002, p. 17). One of the few verifiable reports (prior to rediscovery in 1999) was on Big Pine Key in March 1992 (Glassberg *et al.* 2000, p. 79; Glassberg and Salvato 2000, p. 1; Calhoun *et al.* 2002, p. 17). Following Hurricane Andrew in 1992, there were a few unsupported reports from Key Largo and Big Pine Key and the southeastern Florida mainland from approximately 1993 to 1998 (Glassberg and Salvato 2000, p. 3; Calhoun *et al.* 2002, p. 17). In 1996, four adult Miami blues were observed in the area of Dagny Johnson Key Largo Hammock Botanical State Park (DJSP) by Linda and Byrum Cooper (L. Cooper, listowner of LEPSrUS Web site, pers. comm. 2002; Calhoun *et al.* 2002, p. 17). However, a habitat restoration project apparently eradicated that population (L. Cooper, pers. comm. as cited in Calhoun *et al.* 2002, p. 17).

The Miami blue was presumed to be extirpated until its rediscovery in 1999 by Jane Ruffin, who observed approximately 50 individuals at a site in the lower Keys (Bahia Honda) (Ruffin and Glassberg 2000, p. 3; Calhoun *et al.* 2002, p. 17). Additional individuals were located at a site within 0.5 mile (mi) (0.8 kilometers (km)) of where Ruffin had discovered the population (Glassberg and Salvato 2000, p. 3). Glassberg and Salvato (2000, p. 1) stated that more than 15 highly competent butterfly enthusiasts had failed to find any populations of the Miami blue from 1992 until 1999, despite more than 1,000 hours of search effort in all sites known to harbor former colonies and other potential sites throughout south Florida and the Keys. In May 2001, there was an additional sighting by Richard Gillmore of a single Miami blue in the hammocks in North Key Largo (Calhoun *et al.* 2002, p. 17; J. Calhoun, pers. comm. 2003b).

Current Distribution

Numerous searches for the Miami blue have occurred in the past decade by various parties. The Miami blue was not observed on 105 survey dates at 11 locations on the southern Florida mainland from 1990 to 2002 (Edwards and Glassberg 2002, p. 4). In the Keys, surveys during the same time period also produced no sightings of the Miami blue at 29 locations for 224 survey dates (Edwards and Glassberg 2002, p. 4). In 2002, the Service initiated a status survey, contracting researchers at the UF, to search areas within the subspecies' historical range, concentrating on the extreme south Florida mainland and throughout the Keys. Despite surveys at 45 sites during 2002–2003, adults or immature stages were found only at a single site near BHSP on West Summerland Key (Emmel and Daniels 2004, pp. 3–6; 21–25) (approximately 1.9 mi [3 km]) west of BHSP). The Miami blue was not found on the mainland, including Fakahatchee Strand, Charles Deering Estate, ENP, Marco Island, or Chokoloskee (Emmel and Daniels 2004, pp. 5–6, 25). It was also absent from the following locations in the Keys: Elliott, Old Rhodes, Totten, and Adams Key in Biscayne National Park (BNP) and Key Largo and Plantation Key in the Upper Keys; Lignumvitae, Lower Matecumbe, Indian, and Long Keys in the Middle Keys; and Little Duck, Missouri, Ohio, No Name, Big Pine, Ramrod, Little Torch, Wahoo, Cudjoe, Sugarloaf, and Stock Island in the Lower Keys (Emmel and Daniels 2004, pp. 3–5; 21–24).

Based upon an additional independent survey in 2002, the Miami blue was also not found at 18 historical locations where it had previously been observed or collected in Monroe, Broward, Miami-Dade, and Collier Counties into the 1980s (D. Fine, unpub. data, pers. comm. 2002). These were: Cactus Hammock (Big Pine Key), County Road (Big Pine Key), Grassy Key, John Pennekamp Coral Reef State Park (Key Largo), Windley Key, Crawl Key, Stock Island, Plantation Key, and Lower Matecumbe Key in Monroe County; Hugh Taylor Birch State Park and Coral Springs (2 locations) in Broward County; Redlands, Frog City, Card Sound Road, and an unidentified road in Miami-Dade County; and Marco Island and Fakahatchee Strand State Preserve in Collier County.

In 2003, the Service contracted the North American Butterfly Association (NABA) to perform systematic surveys in south Florida and the Keys to identify all sites at which 21 targeted butterflies, including the Miami blue, could be found. Despite considerable survey effort (*i.e.,* 187 surveys performed), the Miami blue was not located at any location except BHSP (NABA 2005, pp. 1–7). In addition, the Miami blue was not present within the J.N. Ding Darling National Wildlife Refuge or on Sanibel-Captiva Conservation Foundation properties (both on Sanibel Island), during annual surveys conducted from 1998 to 2009 (M. Salvato, pers. comm. 2011a). Monthly or quarterly surveys of Big Pine Key, conducted from 1997 to 2010, failed to locate Miami blues (M. Salvato, pers. comm. 2011b). Minno and Minno (2009, pp. 77, 123–193) failed to locate the subspecies during butterfly surveys throughout the Keys conducted from August 2006 to July 2009.

Although two fourth-instar larvae were documented on West Summerland Key in November 2003, on unprotected land approximately 2.2 mi (3.6 km) west of BHSP (Emmel and Daniels 2004, pp. 3, 24, 26), none have been seen there since. According to Daniels (pers. comm. 2003c), an adult (or adults) was likely blown to this key from BHSP by strong winds or was at least partially assisted by the wind.

In November 2006, Miami blues were discovered on islands within KWNWR (Cannon *et al.* 2007, p. 2). This discovery was significant because it was a new, geographically separate population, and doubled the known number of metapopulations remaining (to 2). During the period from 1999 to 2009, the Miami blue was consistently found at BHSP (Ruffin and Glassberg 2000, p. 29; Edwards and Glassberg 2002, p. 9; Emmel and Daniels 2009, p. 4; Daniels 2009, p. 3). However, this population may now be extirpated. Thus, islands of KWNWR appear to support the only known extant population.

Overall, the Miami blue has undergone a substantial reduction in its historical range, with an estimated >99 percent decline in area occupied (Florida Fish and Wildlife Conservation Commission [FWC] 2010, p. 11). In 2009, metapopulations existed at two main locations: BHSP and KWNWR, roughly 50 mi (80 km) apart. The metapopulation at BHSP is now possibly extirpated with the last adult documented in July 2010 (A. Edwards, Florida Atlantic University, pers. comm. 2011). It is feasible that additional occurrences exist in the Keys, but these may be ephemeral and low in

population number (Saarinen 2009, p. 143). In 2010, the Service funded an additional study with UF to search remote areas for possible presence; this study has not identified any new populations. The subspecies was not located in limited surveys conducted in the Cape Sable area of ENP in March 2011 (P. Halupa, pers. obs. 2011; M. Minno, pers. comm. 2011a) nor December 2011 (J. Daniels, pers. comm. 2011).

Bahia Honda State Park

BHSP is a small island at the east end of the lower Keys, approximately 7.0 mi (11.3 km) west of Vaca Key (Marathon) and 2.0 mi (3.2 km) east of Big Pine Key. The amount of suitable habitat (habitat supporting larval host plants and adjacent adult nectar sources) within BHSP is approximately 1.5 acres (ac) (0.6 hectares [ha]). Of the suitable habitat available at BHSP, approximately 85 percent (1.3 ac [0.5 ha]) was occupied by the Miami blue (Emmel and Daniels 2004, p. 12). The metapopulation comprised 13 distinct colonies, with the core comprising 3 or 4 colonies, located at the southwestern end (Emmel and Daniels 2004, pp. 6, 27). This area contained the largest contiguous patch of host plants, although the size was estimated to be 0.8 ac (0.32 ha) (Emmel and Daniels 2004, p. 12). The second largest colony occurred at the opposite (northeast) end of BHSP and was based solely on the presence of two to three small, isolated patches of nickerbean directly adjacent to an existing nature trail and parking area (Emmel and Daniels 2004, p. 6). The remaining colonies were isolated, with most occurring in close proximity to the main park road (Emmel and Daniels 2004, pp. 13, 27). Isolated colonies used very small patches of nickerbean (*e.g.,* one was estimated to be 10 by 10 feet [3 by 3 meters]) (Emmel and Daniels 2003, p. 3), often adjacent to paved roads (Emmel and Daniels 2004, pp. 6, 12, 27).

Key West National Wildlife Refuge

Efforts to define the limits of the KWNWR metapopulation were conducted from November 2006 to July 2007 (Cannon *et al.* 2007, pp. 10–11; 2010, p. 849). Miami blues were found at seven sites on five islands in the Marquesas Keys, approximately 18 to 23 mi (29 to 37 km) west of Key West, and on Boca Grande Key, approximately 12 mi (19 km) west of Key West (Cannon *et al.* 2007, pp. 1–24; 2010, pp. 847–848). The eight sites occupied by Miami blues ranged from approximately 0.25 to 37.10 ac (0.1–15.0 ha) (Cannon *et al.* 2007, p. 6; 2010, p. 848). The combined amount of upland habitat of occupied sites (within KWNWR) was roughly 59 ac (23.8 ha) (Cannon *et al.* 2010, p. 848). Miami blues were not found on Woman Key, approximately 10.1 mi (16.2 km) west of Key West, or Man Key, approximately 6.8 mi (10.9 km) west of Key West; these sites had abundant nectar plants, but few host plants (Cannon *et al.* 2007, pp. 5, 12; 2010, pp. 848–850). In addition, the Miami blue was not found on six islands in the Great White Heron National Wildlife Refuge (GWHNWR); these sites contained limited amounts of, or were lacking, either host plants or nectar plants (Cannon *et al.* 2007, pp. 5, 12; 2010, pp. 847, 850–851).

In a separate study, Daniels also found four of the sites previously occupied within KWNWR to support the Miami blue variously from 2008 to 2010 (Emmel and Daniels 2008, pp. 7–10; 2009, pp. 9–13; Daniels 2008, pp. 1–6; Daniels 2010, pp. 3–5; J. Daniels, pers. comm. 2010a). Survey effort, however, was limited. Some previously occupied islands were not searched, and no new occupied areas were identified.

Followup presence and absence surveys by KWNWR in 2009 showed that the Miami blue was present on two sites in the Marquesas, but not on Boca Grande (P. Cannon, pers. comm. 2010a). In 2010, similar surveys indicated that the Miami blue was present on Boca Grande and one site in the Marquesas; it was still not located on Woman Key (P. Cannon, pers. comm. 2010b; T. Wilmers, pers. comm. 2010a). In March and April 2011, Miami blues were still present on five of seven sites where previously found in KWNWR (T. Wilmers pers. comm. 2011a; Haddad and Wilson 2011, p. 2).

Reintroductions

Although Miami blue butterflies were successfully reared in captivity, reintroductions have been unsuccessful. Since 2004, approximately 7,140 individuals have been released (J. Daniels, pers. comm. as cited in FWC 2010, p. 8). Initially, larvae were released in the vicinity of Flamingo at multiple locations within ENP (J. Daniels, pers. comm. 2012). Between August 2007 and November 2008, reintroduction events were carried out at BNP and DJSP 12 times resulting in the release of 3,553 individuals (276 adults/3,277 larvae) (Emmel and Daniels 2009, p. 4). Monitoring efforts have been limited; 19 days were spent monitoring reintroduction sites (Emmel and Daniels 2009, p. 4). To date, no evidence of colony establishment has been found (Emmel and Daniels 2009, p. 4). It is not clear why reintroductions were unsuccessful. Numerous factors may have been involved (*e.g.,* predation, parasitism, insufficient host plant or larval sources). Due to limited resources and other constraints, standard protocols were not employed to help identify factors that may have influenced reintroduction success. Research with surrogate species may be helpful to better establish protocols and refine techniques for the Miami blue prior to future propagation and reintroduction efforts.

Population Estimates and Status

Bahia Honda State Park Metapopulation

Prior to its apparent extirpation, the metapopulation at BHSP was monitored regularly from 2002 to 2009 (Emmel and Daniels 2009, p. 4). Pollard transects (fixed-route transects walked weekly under favorable weather conditions) at the south-end colony site (largest) yielded annual peak counts of approximately 175, 84, 112, and 132, from 2002 to 2005 (prior to hurricanes), and 82, 81, 120, and 38, from 2006 to 2009 (Emmel and Daniels 2009, p. 4). From October 2002 to September 2003, abundance estimates using mark-release-recapture (Schnabel method) ranged from a low of 19.7 in February 2003 to a high of 114.5 in June 2003 (Emmel and Daniels 2004, p. 9).

Counts ranged from 6 to 100 adults during surveys by the NABA, conducted from February 2004 to January 2005 (NABA 2005, unpub. data). Monthly (2003 to 2006) or bimonthly (2007) monitoring by Salvato (pers. comm. 2011c) at the south-end colony produced annual average counts of 129, 58, 46, 6, and 8, respectively, from 2003 to 2007. Salvato (pers. comm. 2011c) observed 21, 10, and 0 Miami blues from 2008 to 2010, respectively, based on limited surveys.

Due to the differences in methodologies and other factors, the above estimates cannot be compared. Although abundance of select butterflies may change frequently, their overall geographic distribution from year-to-year is often more consistent. Given that the Miami blue has overlapping generations and, at times, capacity for explosive growth, it may be useful to report population status in terms of occupied habitat, as has been done for other butterflies (Longcore *et al.* 2010, pp. 335–346; T. Longcore, *in litt.* 2011).

In general, early (dry) season numbers were low in most years and were attributed to a persistent south Florida drought (Emmel and Daniels 2009, p. 4). Abundance trends indicated that there was a marked decrease in the number of

individuals during the winter months (November to February) (Emmel and Daniels 2004, p. 9; 2009, p. 4). Higher abundances during the summer wet season may relate to production of a large quantity of new terminal growth on the larval host plants (nickerbean) and availability of nectar sources from spring rainfall (Emmel and Daniels 2004, pp. 9–11).

Four hurricanes affected habitat at BHSP in 2005, resulting in reduced abundance of Miami blue following subsequent storms that continued throughout 2006 (Salvato and Salvato 2007, p. 160). Although no quantitative measurements were taken, a significant portion of the nickerbean in the survey area (> 35 percent of the area of available habitat) was damaged by the storms; roughly 60–80 percent of the vegetation on the southern side of the island was visually estimated to have been heavily damaged, including large stands of host and nectar plants (Salvato and Salvato 2007, p. 156). Despite a decline in abundance after the hurricanes, the Miami blue had appeared to rebound toward pre-storm abundance by the summer months of 2007 (Salvato and Salvato 2007, p. 160). However, peaks remained below those found prior to the 2005 hurricane season (Emmel and Daniels 2009, p. 4).

Although it is unclear when iguanas became established at BHSP, effects of herbivory on the host plant were apparent by late 2008 or early 2009 (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; P. Cannon, pers. comm. 2009; A. Edwards, pers. comm. 2009; P. Hughes, pers. comm. 2009; M. Salvato, pers. comm. 2010a). Defoliation was mostly limited to the south-end colony site (Emmel and Daniels 2009, p. 4). Cooperative eradication efforts to address this problem began in 2009 and continue today; however, iguanas continue to impact terminal nickerbean growth (see *Summary of Factors Affecting the Species*) (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; E. Kiefer, BHSP, pers. comm. 2011a). From 2006 through 2009, adult or immature Miami blues were found at several colony sites; however, one colony became relatively unproductive in 2005 (pre-hurricane) (Emmel and Daniels 2009, p. 4). No Miami blues have been found at any roadway nickerbean patches within BHSP since 2005, prior to the advent of profound iguana herbivory and damages from hurricanes (Emmel and Daniels 2009, p. 4).

The metapopulation has diminished in recent years likely due to the combined effects of small population size, drought, cold temperatures, and iguanas (see *Summary of Factors Affecting the Species*). In 2010, few Miami blues were observed at BHSP. On January 23, 2010, a photograph was taken of a pair of Miami blues mating (Olle 2010, p. 5). On February 12, 2010, a photograph was taken of a single adult (C. DeWitt, pers. comm. 2011). In March 2010, Daniels found one larva, but no adults (D. Cook, FWC, pers. comm. 2010a). In July 2010, a single adult was observed and photographed (A. Edwards, pers. comm. 2011). No Miami blue adults have been located during quarterly surveys conducted in 2010 by Salvato (pers. comm. 2010b, 2011c). No Miami blue butterflies of any life stage were subsequently seen despite frequent searches (D. Cook, pers. comm. 2010a; P. Cannon, pers. comm. 2010c, 2010d, 2010e, 2010f; M. Salvato, pers. comm. 2011c, 2011d; Jim Duquesnel, BHSP, pers. comm. 2011a, 2011b).

Key West National Wildlife Refuge Metapopulation(s)

The metapopulation at KWNWR yielded counts of several hundred, at various times, in 2006–2007. Checklist counting, a method where suitable habitat is initially screened to determine the presence of target species, was used during surveys conducted between November 2006 and July 2007 to document the distribution and abundance of Miami blues (Cannon *et al.* 2007, p. 5; 2010, p. 848). Within the seven sites occupied in the Marquesas Keys, the highest counts ranged from 8 to 521, depending upon site and sampling date (Cannon *et al.* 2007, p. 7; 2010, p. 848). The highest count on Boca Grande was 441 in February 2007 (Cannon *et al.* 2007, p. 7; 2010, p. 848). Highest counts occurred when blackbead flowered profusely and produced new leaves (Cannon *et al.* 2010, p. 851). In March and April, blackbead was observed to yield little new growth and no flowering, and oviposition by Miami blues was not observed (Cannon *et al.* 2007, p. 8). Partial searches on two islands in May and June revealed few Miami blues; little new leaf growth and no flowering of blackbead was observed at these locations after February 2007 (Cannon *et al.* 2010, p. 850). Seasonality observed on KWNWR was different than that described for the BHSP metapopulation (above). Hurricane Wilma (October 2005) heavily damaged or killed blackbead stands at most sites, but it also likely enhanced foraging habitat, if only temporarily, on select islands within the KWNWR (Cannon *et al.* 2007, p. 10; 2010, p. 851) (see *Summary of Factors Affecting the Species*).

Periodic surveys at KWNWR in 2008 and 2009 suggested relatively lower levels of abundance, based upon limited effort (Emmel and Daniels 2008, pp. 7–10; 2009, pp. 9–13) and using different methodologies. In February 2008, researchers recorded 3 adults on Boca Grande and a total of 32 adults at two islands within the Marquesas; lack of rainfall resulted in very limited adult nectar sources and limited new growth of larval host plants (Emmel and Daniels 2008, pp. 7–8). In April 2008, one adult was recorded on Boca Grande; one adult was also recorded at another island (Emmel and Daniels 2008, p. 8). In June 2008, no adults were located on Boca Grande, and a total of 27 were recorded from two other islands (Emmel and Daniels 2008, p. 9). In August 2008, no adults were found at Boca Grande, and five adults were recorded at another island (Emmel and Daniels 2008, p. 10). In March 2009, no adults were recorded on Boca Grande; habitat conditions were deemed very poor, with limited new host growth and available nectar resources (Emmel and Daniels 2009, p. 12). In April 2009, researchers found a total of 22 adults from 2 islands within the Marquesas (Emmel and Daniels 2009, p. 13).

Based upon limited data and observations, the Miami blue persisted on various islands within the KWNWR in 2010. From April through July 2010, the Miami blue was observed on 5 of 10 dates at one location within the Marquesas, although in limited numbers during brief surveys (T. Wilmers, pers. comm. 2010b). On July 28, 2010, researchers recorded 19 adults from 3 islands within the Marquesas, in limited surveys; another 25 adults were recorded on Boca Grande in less than 1 hour of survey work (J. Daniels, pers. comm. 2010a). On September 30, 2010, dozens of Miami blues were observed on Boca Grande; this may have represented an actual population size in the hundreds (N. Haddad, North Carolina State University [NCSU]), pers. comm. 2010). On November 24, 2010, researchers positively identified 48 Miami blue adults on Boca Grande in less than 3 hours of surveys, noting that assessment was difficult due to the many hundreds or possibly thousands of cassius blues, which were also present (P. Cannon, pers. comm. 2010b; T. Wilmers, pers. comm. 2010a). In March and April 2011, researchers observed Miami blue adults at five sites within KWNWR in numbers similar to those reported above (Haddad and Wilson 2011, p. 2). In July 2011, fewer adults were observed (P. Hughes, pers. comm. 2011a). In September 2011,

Refuge staff observed 14 adults on Boca Grande (P. Hughes, pers. comm. 2011b). In December 2011, 88 adults were found in roughly 4 hours (P. Cannon, pers. comm. 2012). In January 2012, Refuge staff observed 20 adults on Boca Grande and 14 adults at one site in the Marquesas during brief surveys under windy conditions (A. Morkill, pers. comm. 2012).

At this time, both the size of the metapopulation at KWNWR and its dynamics are unclear. However, available data (given above) suggest wide fluctuations of adults within and between years and sites. The frequency of dispersal between islands is also not known (Cannon *et al.* 2010, p. 852). Due to the distance between the Marquesas and Boca Grande (*i.e.,* about 7 mi [11 km]) and the species' apparent limited dispersal capabilities, it is possible that two (or more) distinct metapopulations exist within KWNWR (J. Daniels, pers. comm. 2010b). In September 2010, the Service initiated a new study with researchers from NCSU to conduct a comprehensive examination of potential habitat within KWNWR and GWHNWR, quantify current distribution and habitat use, and develop a monitoring protocol to estimate detectability, abundance, and occupancy parameters.

Gene Flow and Genetic Diversity Within Contemporary Populations

Saarinen (2009, pp. 15, 29–33, 40, 44) and Saarinen *et al.* (2009b, pp. 242–244) examined 12 polymorphic microsatellite loci (noncoding regions of chromosomes) to assess molecular diversity and gene flow of wild and captive-reared Miami blue butterflies. In addition, one of these microsatellite loci was successfully amplified from a subset of the museum specimens. Although results from historical specimens should be interpreted with caution (due both to small sample size and the single microsatellite locus), Saarinen (2009, pp. 15, 50–51) reported some loss of diversity in the contemporary populations, though less than had been expected. Even with small sample sizes, historical populations were significantly more diverse (with generally higher effective numbers of alleles and observed levels of heterozygosity) than BHSP; KWNWR population values were between historical values and BHSP values (Saarinen 2009, pp. 44–46).

Both historical and contemporary populations showed evidence of a metapopulation structure with interacting subcolonies (E.V. Saarinen and J.C. Daniels, unpub. data as cited in Saarinen 2009, p. 49). However, the metapopulations at BHSP and KWNWR are separated by a distance of more than 43 mi (70 km). Given the Miami blue's dispersal capabilities (E.V. Saarinen and J.C. Daniels, unpub. data as cited in Saarinen 2009, p. 22), it is unlikely that they interacted. Saarinen's work showed no gene flow and a clear distinction between the BHSP and KWNWR metapopulations (Saarinen 2009, pp. 36, 74, 89) (see *Summary of Factors Affecting the Species*).

Studies addressing molecular diversity at BHSP showed the effective number of alleles remained relatively constant over time, at both a monthly (generational) and annual scale (Saarinen 2009, pp. 71, 84). Allelic (gene) richness was also stable over time in BHSP, with values ranging from 2.988 to 3.121, when averaged across the 12 microsatellite loci from September 2005 to October 2006. These values were lower than those in KWNWR [3.790] (Saarinen 2009, p. 71). However, data showed that the BHSP metapopulation retained an adequate amount of genetic diversity to maintain the population in 2005 and 2006, despite perceived changes in overall population size (Saarinen 2009, p. 77). No significant evidence of a recent genetic bottleneck was found in the BHSP generations analyzed; however, there may have been a previous bottleneck that was undetectable with the methods used (Saarinen 2009, pp. 72, 85, 141).

To explore the level of gene flow and connectivity between discrete habitat patches at BHSP, Saarinen (2009, pp. 64–65) conducted analyses at several spatial scales, analyzing BHSP as a single population (with no subdivision), as individual colonies occupying discrete habitat patches (as several groups acting in a metapopulation structure), and as a division of clumped colonies versus other, more spatially distant colonies. Analyses of microsatellite frequencies were also used to assess gene flow between habitat patches (Saarinen 2009, p. 72). While some subpopulations were well linked, others showed more division (Saarinen 2009, p. 73). High levels of gene flow (and relatively little differentiation) were apparent even between distant habitat patches on BHSP, and the smaller patches appeared to be important links in maintaining connectivity (Saarinen 2009, pp. 78, 141). Overall, gene flow between habitat patches on BHSP was considered crucial to maintaining genetic diversity and imperative for the Miami blue's long-term persistence at this location (Saarinen 2009, p. 141).

The metapopulation structure on KWNWR is more extensive than that which occurred at BHSP (Saarinen 2009, p. 49). Due to small sample sizes from Boca Grande, only samples from the Marquesas Keys were used for genetic analysis of KWNWR, and results were limited (Saarinen 2009, pp. 66, 72). Overall, this metapopulation was found to have higher genetic diversity (mean observed heterozygosity of 51 percent versus 39.5 percent) than the BHSP population (Saarinen 2009, p. 49). Allelic richness (3.790 in February 2008) was also higher in KWNWR (Saarinen 2009, pp. 71, 75). Accordingly, KWNWR is a particularly important source of variation to be considered for future conservation efforts for this taxon (Saarinen 2009, pp. 71, 75), especially now if this is the only extant metapopulation(s) remaining. The KWNWR metapopulation showed signs of a bottleneck and may support the hypothesis that it is a newly founded population (Saarinen 2009, pp. 76, 141). Further work is needed to better understand the metapopulation dynamics and genetic implications in this population.

Summary of Comments and Recommendations

In the proposed rule published on August 10, 2011 (76 FR 49408), we requested that all interested parties submit written comments on the proposal by October 11, 2011. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in The Miami Herald, Orlando Sentinel, Tampa Tribune, The Daytona Beach News-Journal, and the Key West Citizen on Sunday, August 21, 2011. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received 37 comment letters (from 35 entities) directly addressing the proposed listing of the Miami blue butterfly with endangered status and the proposed listing of the cassius blue, ceraunus blue, and nickerbean blue butterflies as threatened under similarity of appearance. With regard to listing the Miami blue butterfly as endangered, 25 comments were in support, 2 were in opposition, and 10 were neutral. With regard to listing the other 3 butterflies under similarity of appearance, 4 comments were in support, and 16 comments were in opposition. Of those comments in opposition, six suggested alternatives that were more limited in scope (*e.g.,* applying similarity of appearance provisions to the Miami blue's current

or historical range). All substantive information provided during the comment period has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from 14 individuals with specialties that include scientific expertise with butterflies, particularly lycaenids, and general expertise with ecology and conservation. We received independent responses from eight of the peer reviewers. We also received two collaborative responses from State governmental agencies, which had been solicited as part of this process. We address these under *Comments from the State.*

We reviewed all comments received from peer reviewers for substantive and new information regarding the listing of the Miami blue butterfly as endangered and the cassius blue, ceraunus blue, and nickerbean blue butterflies as threatened under similarity of appearance. The peer reviewers concurred with the conclusion to list the Miami blue butterfly as endangered and provided additional information, clarifications, and suggestions to improve the final rule. In general, the majority of peer reviewers opposed Federal listing of the three other butterflies due to similarity of appearance; however, one reviewer agreed with the original proposal, and three suggested applying the similarity of appearance listing only to select areas where the butterflies may co-occur with the Miami blue.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer indicated that the Miami blue butterfly should remain in the genus *Hemiargus,* as originally described, citing Comstock and Huntington (1943), Nabokov (1945), and Vila *et al.* (2011) as relevant taxonomic papers. The reviewer noted that only limited phylogenetic analyses have been conducted to determine if the genus *Hemiargus* should be split into a variety of additional genera, such as *Cyclargus.* In his view, the Miami blue is well characterized and easily recognized, but should continue to be treated as *Hemiargus thomasi bethunebakeri* and listed as such, rather than *Cyclargus thomasi bethunebakeri.*

Our Response: We acknowledge that some sources continue to place the Miami blue in the genus *Hemiargus.* However, our basis for using *Cyclargus* is founded on published and unpublished literature, separate confirmation of specimens from independent taxonomists or reviewers, and other accepted taxonomic sources (see *Taxonomy*). We note that several Web sites (*e.g., Butterflies of America, Catalog of the Butterflies of the United States and Canada,* and the *Integrated Taxonomic Information System),* widely regarded as definitive sources, also continue to place the Miami blue as *Cyclargus thomasi bethunebakeri.* We determined that this is the most appropriate nomenclature because it is more widely accepted by the scientific community. Therefore, we have used the genus *Cyclargus* in this final rule.

(2) *Comment:* Two peer reviewers and five commenters expressed concern over the Service's determination that critical habitat is not prudent, disagreed with this decision, or otherwise suggested that we reconsider this determination. Two commenters supported our determination. Comments in opposition to our not prudent determination were largely based on the potential benefits of designating critical habitat and skepticism that increased risk and harm to the Miami blue would occur with designation, as ample detail is already available for poachers to locate remaining populations.

Our Response: We determined that designating critical habitat for the Miami blue is not prudent. We recognize that designation of critical habitat can provide benefits to listed species (see *Benefits to the Subspecies From Critical Habitat Designation,* below, as well as discussion later in this response); however, for the Miami blue, increased threats (see *Increased Threat to the Subspecies by Designating Critical Habitat,* below) outweigh the benefits (see *Increased Threat to the Subspecies Outweighs the Benefits of Critical Habitat Designation,* below).

We do not dispute the arguments of the two peer reviewers and some commenters who suggested that industrious or unethical collectors have enough information to be able to locate the remaining populations. We acknowledge that general location information is provided within the rule, and more specific location information can be found through other sources. However, we maintain that designation of critical habitat would more widely publicize the potential locations of the butterfly and its essential habitat to poachers, collectors, vandals, and mischievous individuals, thereby exacerbating the already significant threats of collection, vandalism, disturbance, fire, and other harm from humans.

One commenter, who agreed with our decision that designating critical habitat is not prudent, provided additional references (Hoekwater 1997, Kleiner 1995, O'Neill 2007) showing that individuals poach rare and imperiled taxa for profit, even to the point of driving a species to extinction in order to increase the value of individual specimens (Laufer 2009). We want to stress that our reasons for not designating critical habitat go beyond the potential increased threat of collection, but also involve potential associated increased risks to sensitive and important habitats (see also *Inadvertent and Purposeful Impacts From Humans,* below). Designation of unoccupied habitat could also alienate any affected private landowners and stakeholders, thus limiting reintroduction and recovery options (see also Response to Comment #24 below).

We agree that designation of critical habitat can provide some benefits to listed species (*e.g.,* a tool to restore and manage habitat on Federal lands, greater awareness and education by the public, increased cooperation by other agencies to improve habitat). With the Miami blue, substantial efforts at education and active conservation efforts from Federal, State, and local agencies are already underway, so potential added benefits from designation would likely be minimal.

(3) *Comment:* One peer reviewer stated that the status of the Miami blue is grave and that extinction is a distinct possibility. Another peer reviewer stated that the Miami blue has an extremely high likelihood of becoming extinct unless active conservation measures are applied immediately.

One commenter indicated that the Miami blue is one of the rarest butterflies in the United States and in the world. The commenter specifically stated that it may be the single rarest butterfly species, and is rarer than at least 14 species that are listed under the Act. He indicated that understanding spatial and population structure and dispersal are keys to recovery, as are restoration and reintroduction. Another commenter, certified by the International Union for the Conservation of Nature to evaluate extinction risk, stated that the Miami blue meets all five criteria for listing under the Act. Another commenter urged immediate action to address threats and the development of a ''functional'' recovery plan, with the assistance of experts. Another commenter encouraged the Service to take all possible steps to recover the subspecies, stressing the importance of future reintroductions in the best possible habitats.

Our Response: We agree. The threats to the Miami blue pose a significant risk

to the subspecies and were the basis of our emergency determination, which immediately put forth conservation measures (see *Available Conservation Measures,* below). We are actively working with stakeholders and partners to implement additional conservation actions now to prevent extinction. We fully intend to actively engage others and implement actions that will help ensure survival and long-term recovery. We will work closely with scientific experts, land managers, stakeholders, and others to ensure that any future captive propagation and reintroduction efforts do not harm the wild population, and occur in optimal habitat to increase the likelihood of persistence.

(4) *Comment:* One peer reviewer stated that the largest threat to the Miami blue is the small size of the single remaining metapopulation. He contended that, if the subspecies is to survive, the priority needs to be on improving the quality of existing habitats, enlarging breeding areas, and creating new breeding habitats, if possible. One commenter estimated numbers at the peak of the Miami blue's flight period in the hundreds, stating that conservation biologists agree that numbers should be many thousands to counteract the negative effects of inbreeding, genetic drift, and environmental catastrophes. This commenter also stated the small area currently occupied is ''frighteningly small'' and that additional and more widespread sites are needed to provide insurance against the extinction of a localized population. This reviewer and other commenters believed that reestablishment at other locations is a priority because of the substantial risk of extinction due to stochastic events and other threats.

Our Response: We agree that several of the most important threats to the Miami blue are currently small population size, few populations, and restricted range. We concur that the actions specified are needed and acknowledge that other actions to reduce threats are also needed for survival and recovery (see *Determination of Status,* below).

(5) *Comment:* One peer reviewer suggested that poaching is a more accurate term than collection. This reviewer viewed poaching as a potential threat to the Miami blue and indicated that to spend ''two full pages discussing hypothetical threats sounds biased'' in his view. One commenter stated that the Miami blue has no protection from poachers and suggested that listing may invite poachers to offshore islands. She indicated that she has been contacted by someone interested in acquiring rare butterflies. Another commenter noted that listing would call additional attention from commercial traders to the Miami blue and related species.

Our Response: We provided a thorough and detailed description of the threat posed by collection in the proposed rule. In addition, we believe that it is necessary to fully discuss the many activities that go beyond collection, and include other illegal and illicit activities. Because we do not have evidence of collection of the Miami blue, we outline illegal and illicit activities involving other listed or imperiled butterflies on various protected lands and the established markets for specimens. We have determined that poaching is a potential and significant threat that could occur at any time, but poaching is only a subset of the activities that threaten the Miami blue. The generic term ''collection'' is more easily understood by the public and better encompasses the breadth of activities related to this threat.

We recognize that listing may inadvertently increase the threat of collection and trade (*i.e.,* raise value, create demand). However, we have determined, based upon the best available scientific information, that the subspecies meets the criteria for Federal protection. Accordingly, it is our obligation to take protective action through Federal listing to help safeguard the subspecies.

(6) *Comment:* Two peer reviewers indicated that a better understanding of host plants will be essential for effective Miami blue conservation. One noted that there is considerable ambiguity as to the breadth of host plant use and plant-herbivore interactions. Another peer reviewer noted the general preference of the Palos Verdes blue butterfly for fresh growth on host plants (citing Johnson *et al.* 2011). This reviewer suggested that not all available host plant mass at a given location may be appropriate for use (larval and female egg-laying) and that the actual available suitable host plant may be far less than the total mass at any given site. One commenter suggested that no natural populations of the Miami blue are known to feed on balloonvine, despite its availability. Another commenter noted that the Miami blue was originally associated with balloonvine, but subsequently adapted to using gray nickerbean due to efforts to control balloonvine.

Our Response: We agree that further studies into historical and current Miami blue host plant preferences are essential to best conserve and recover the subspecies. Available scientific literature documents a variety of host plants for the Miami blue (see—*Life History* and *Habitat* under Background, above). This is consistent with recent host plant use in contemporary Miami blue populations. The last Miami blues observed on northern Key Largo in 1996 fed on balloonvine; those at BHSP fed on nickerbean and blackbead; and those within KWNWR rely primarily on blackbead. We note that balloonvine was not reported as a host plant until the 1970s, and that host plant use appears to have changed through time depending upon availability (see *Habitat* for complete discussion). Balloonvine was likely only one of several legumes used by historical Miami blue populations.

We agree that not all available host plants at a given location may be appropriate for larval use and that actual available suitable host plant mass may be far less than the total present. This is consistent with findings from available research. For example, when the Miami blue occurred at BHSP, only a small portion of available habitat on the island appeared occupied, and higher abundances were found when there was a large quantity of new terminal growth of nickerbean and when more nectar sources were available (Emmel and Daniels 2004, pp. 9–12).

(7) *Comment:* One peer reviewer recommended several clarifications regarding the description of the Miami blue (wing-chord length) and aspects of its life history (four instars, not five).

Our Response: We have replaced the term ''wing-chord length'' with the more frequently used measure of ''forewing.'' The term fifth-instar was a typographical error and has been corrected with fourth-instar. We also made other suggested minor clarifications. These changes are set forth in the Background section of this final rule.

(8) *Comment:* Two peer reviewers questioned the maximum adult life span of the Miami blue and how this was determined and suggested that adults likely live more than 9 days. These reviewers suggested that older individuals may be more likely to disperse and that finding them once dispersed may be difficult. One reviewer cited research showing that older females may be prone to longer movements (Bergman and Landin 2002, p. 361).

Our Response: We agree that the maximum 9-day life span as discussed in the emergency rule is unclear and may be an underestimate of natural adult life span. We have clarified the text in this final rule accordingly. Additional field studies are needed to

better ascertain adult Miami blue longevity in the wild and to determine dispersal capabilities.

(9) *Comment:* Three peer reviewers and one commenter questioned the degree to which the Miami blue is sedentary, suggesting that it may be less sedentary than described. One reviewer suggested that the subspecies may be sedentary at certain stages of its life, but that the Miami blue's historical range (*i.e.,* central Florida to the Keys and Dry Tortugas) is evidence that it disperses over wide areas of water over long periods of time. Another suggested that it only takes a wayward gravid female to colonize a new habitat. Another suggested that a butterfly surviving in a metapopulation due to habitat structure such as the Miami blue must have stronger dispersal capabilities than described in the rule, at least in a small fraction of the population.

One commenter stated that, although the butterfly appears to be sedentary now, it once occurred widely in the Keys and coastal areas of central and southern Florida and that it is capable of dispersing and colonizing new areas, including islands.

Commenters suggested that keys to designing a recovery strategy include a clear focus on basic life history, population dynamics, and an improved understanding of dispersal. One commenter indicated that a well-informed recovery plan would include a strategy for multiple interconnected populations that buffer the subspecies when some localized populations are lost and that more information is needed about dispersal capacity.

Our Response: We agree that the Miami blue may be less sedentary than described and have made clarifications to the text. At this time, it is unclear how far the butterfly can disperse and the mechanisms for dispersal (*i.e.,* active [flight] or passive [wind-assisted]). We acknowledge that wayward individuals and gravid females can colonize new areas. Clearly, additional study is needed to better understand the Miami blue's dispersal capabilities and mechanisms. We agree that improved understanding of basic life history and population dynamics, including dispersal, will be key components to an effective recovery strategy. An effective recovery strategy will likely provide for multiple, interconnected populations that enable genetic exchange and facilitate recolonization in the event of local extirpations.

(10) *Comment:* One peer reviewer indicated that diapause can be difficult to detect. He suggested that the Miami blue, like other closely related species, could enter diapause as third instars rather than as adults, in response to photoperiod, temperature, or changes in host plants.

Our Response: We acknowledge that there is some uncertainty regarding diapause (see *Life History*). We believe that the Miami blue's life history requires further study in order to better determine if any life stages undergo a dormant period.

(11) *Comment:* One peer reviewer expressed his opposition of mark-recapture methods for lycaenids, particularly small blues, such as the Miami blue butterfly.

Our Response: We acknowledge that not enough information is known about the influence of mark-recapture on butterflies and that it can be harmful, depending upon the species, techniques employed, skill of handlers, and other factors. There have been several studies of various mark-recapture techniques with conflicting results regarding the impact on butterflies. Recently, Haddad *et al.* (2008, p. 938) reviewed several types of monitoring techniques and suggested that mark-recapture is not appropriate for small and/or imperiled butterflies. Researchers are not employing mark-recapture techniques on the Miami blue at this time.

(12) *Comment:* One peer reviewer indicated that disturbance factors may be beneficial to the host plants and that conservationists have a tendency to remove disturbances from protected lands, which can work against species dependent upon early successional plants (citing Longcore and Osborne 2010 and Longcore *et al.* 2010). One commenter indicated that trampling of host plants has occurred within KWNWR.

Our Response: We agree that periodic natural disturbances may benefit the habitat, thereby increasing the vigor or distribution of important host plants. However, human-related disturbances (*e.g.,* vandalism, trampling, camping, fire pits) can present significant risk to the Miami blue (especially larval stages) and important stands of host plants (see *Inadvertent and Purposeful Impacts from Humans*). Given the butterfly's overall vulnerability to extinction, we acknowledge that it will be important to minimize human-related and other controllable threats, especially in areas of known occupied habitat. Reducing threats will help safeguard the subspecies and its habitat.

(13) *Comment:* One peer reviewer stressed the importance of ant associations among lycaenids and provided various examples and citations. This reviewer stated that he believed that carpenter ants, *Camponotus* spp., may be extremely important in the reintroduction and long-term survival of the Miami blue at specific locations and that successful establishment may be dependent upon presence of these ants. Another peer reviewer cited a new paper by Trager and Daniels (2011) on mating and egg production in the Miami blue, noting that incorporating that study into the background does not change the outcome or conclusions of the proposed and emergency rules. Two commenters also noted interactions (mutualistic, predatory) between the Miami blue and ants and suggested further investigation.

Our Response: We agree that ant associations may be an important component of the Miami blue's life history and that further studies of ant and Miami blue larval interactions are needed. Studies focusing on remaining populations would be useful. However, it may also be helpful to examine ant-larval interactions using surrogate species at historical Miami blue locations (*e.g.,* BHSP or Key Largo) or in the laboratory. We have included information from the Trager and Daniels (2011) paper in the Background (see *Life History,* above) and agree that this paper does not alter the conclusions of our proposed and emergency rules. It also does not alter the conclusions of this final rule.

(14) *Comment:* One peer reviewer cautioned against comparisons of Pollard transect counts with mark-recapture abundance estimates, noting that these two different methods of estimating population size can be compared with similar methods but not necessarily with each other. This reviewer suggested that, because the Miami blue has overlapping generations and presumably the capacity for explosive growth, it might be more productive to report population status in terms of area occupied (citing Longcore *et al.* 2010).

Our Response: We agree. We understand that there are a variety of techniques to measure abundance and monitor butterfly populations and have clarified discussion of available data (see *Population Estimates and Status,* above). Researchers are currently refining methods and techniques to most effectively gauge population size within KWNWR, including seasonality, as part of an ongoing study the Service funded in 2010. Gauging overall status in terms of occupied habitat, as has been done for other butterflies, may be more meaningful (Longcore *et al.* 2010, pp. 335–346; T. Longcore, *in litt.* 2011).

(15) *Comment:* One peer reviewer noted that Clench only made one collecting trip to the West Indies (the

Bahamas before 1941) (see Clench 1941).

Our Response: We have clarified the text in this final rule accordingly.

(16) *Comment:* One peer reviewer was concerned about a proposed project to develop a zip-line course at Crane Point in the City of Marathon and suggested that the Service work closely with the City to minimize potentially adverse impacts of such a development to the recovery of the Miami blue.

Our Response: We were not aware of this particular project, but we are coordinating with agencies and partners regarding various development projects within Monroe County to avoid and minimize impacts to the Miami blue and other federally listed species. We will work closely with the City of Marathon and others on this potential project as well.

Comments Relating to Similarity of Appearance Butterflies

(17) *Comment:* Six peer reviewers and ten commenters opposed listing the other butterflies due to similarity of appearance, as proposed, for a variety of reasons. The proposed action was generally opposed because it was thought to be overly restrictive or not needed because the similar butterflies are common and can be readily differentiated from the Miami blue based upon clear morphological differences.

Some reviewers and commenters supported the listing of the similar butterflies as proposed. Other reviewers, commenters, and FWC suggested alternatives for application of the similarity of appearance provision of the Act. These alternatives consisted of limiting application to only areas where the butterflies are sympatric with the Miami blue (potential or occupied habitat), only within critical habitat (if designated), only within specified counties, or only within counties within the Miami blue's historical range.

Those in opposition generally believed that listing similar butterflies would impede research and discourage cooperation or scientific support for future listing actions. Several commenters indicated that it would negatively and needlessly impact collectors, hobbyists, and those who collect insects for educational purposes. One commenter stated that there should not be any restrictions on the sale, purchase, or gifts of legally obtained cassius, ceraunus, or nickerbean blue butterflies. One commenter warned that the ''unnecessary ban on collection and commerce'' of the three ''similar'' species could ultimately harm the butterflies by impeding research and future discoveries, and also harm the relationships between the Service and hobbyist collectors, researchers, and naturalists. The same commenter suggested that careful monitoring and patrolling of occupied and historical suitable sites may be a more effective protective measure than enforcing a ban on collection and commercial transactions involving these taxa at a state or national level.

Another commenter noted that the action was not necessary because those seeking to collect the Miami blue or similar species on protected conservation lands would theoretically already possess the necessary permits. Some commenters suggested that listing due to similarity of appearance was inconsistent with other butterfly listings that have similar species that more closely resemble each other and do not have similarity of appearance provisions.

Our Response: We carefully considered all of the comments received and agree that prohibiting collection, possession, and trade of these similar butterflies throughout their national and international ranges could result in unnecessary restrictions and regulatory burdens. After careful review of the needs of the Miami blue and the potential impacts of the special 4(d) rule as originally proposed, we have reconsidered this aspect of the proposed rule and have made significant changes regarding its application. Consequently, in this final rule, only collection of these similar butterflies within the current and historical range of the Miami blue butterfly will be prohibited. See Summary of Changes from Proposed Rule, below, for more detail.

We maintain that the Miami blue, due to its small population size and few populations, faces a significant threat from collection, and that prohibiting collection of similar butterflies within the historical range of the Miami blue is in the best interest of the subspecies. We have determined that limiting application of the special 4(d) rule to only the act of collecting and only within the historical range of the Miami blue is sufficient to protect the subspecies from threats faced due to collection pressure on the three similar butterflies. The proposed restrictions on trade and commerce have been removed, thus eliminating unnecessary restrictions and reducing regulatory burdens for most potentially affected parties (*i.e.,* elsewhere in Florida, other countries). We value relationships and are committed to working cooperatively with stakeholders to relieve unnecessary burdens while safeguarding the subspecies.

With regard to concerns regarding research, studies can be conducted on the similarity of appearance butterflies in the vast majority of their ranges (*i.e.,* outside of Florida, outside of the affected counties in Florida). For research in south and central Florida, many scientific activities involving the similar butterflies will only need prior written authorization (*e.g.,* a letter) from the Service. See *Special Rule Under Section 4(d) of the Act* below for more information.

We agree that increased patrols and monitoring may be helpful in deterring collection of the Miami blue. However, due to limited resources, this may not be feasible.

We disagree with views that listing the other butterflies due to similarity of appearance is unnecessary because those seeking to collect the Miami blue or similar species on conservation lands would already possess the necessary permits. We are aware of cases where federally listed species have been collected from conservation lands illegally or without permits (see *Collection,* below) and acknowledge that listing may increase demand for specimens. We have determined that the similarity of appearance provisions will help deter potential collection of Miami blues (purposeful or inadvertent) in all areas within its historical range, including those areas that are not conserved or those in private ownership.

Finally, we acknowledge that similarity of appearance has not been previously applied to arthropods (including insects, such as butterflies) prior to this listing, but it is a tool available to us under the Act. Similarity of appearance protections can be effective in situations where collection is a primary threat and population sizes are extremely low, as in the case of the Miami blue butterfly. We have determined that a special rule listing the additional three butterflies is necessary in this instance to protect the subspecies from collection throughout its current and historical range.

(18) *Comment:* One peer reviewer indicated that, if listing creates demand for collectors, then listing of the other similarity of appearance butterflies will increase the likelihood of intentional or unintentional collection of the Miami blue. Another reviewer and a commenter suggested that listing would increase their values to collectors. Other reviewers and commenters believed that the issue of illegal collection of the Miami blue is unlikely to be deterred by listing the three additional co-occurring, common butterflies.

Our Response: Although we agree that listing may create demand for some collectors, we find that prohibiting collection of the similarity of appearance butterflies within the Miami blue's historical range will help reduce the threat of collection for the Miami blue. Through this action, the public and all stakeholders will be aware that the collection of the Miami blue and other similar blue butterflies in coastal south and central Florida is prohibited and illegal.

(19) *Comment:* One peer reviewer questioned if the other similarity of appearance butterflies would remain listed should the Miami blue butterfly become extinct.

Our Response: If the Miami blue becomes extinct, the similarity of appearance butterflies will remain listed until the Miami blue becomes delisted, or we deem that the similarity of appearance protections are no longer necessary. In either of these scenarios, the Service would need to have adequate scientific data suggesting these actions are warranted, and then proceed with the normal rulemaking process (*i.e.,* publish proposed and final rules in the **Federal Register**).

Comments From the State

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State are addressed below.

(20) *Comment:* The FWC stated that it did not have any additional data or other information that would lead to different conclusions regarding the Miami blue's threats, life history, or other ecological attributes. The FWC supported our decision not to designate critical habitat. With regard to listing the other three blues as threatened due to similarity of appearance, the FWC supported the listing of the other blues, but suggested that it need only apply to the counties within the Miami blue's historical range. The FWC also encouraged the use of their management plan as a basis for the Federal recovery plan and other management and recovery actions.

Our Response: We agree with the FWC's recommendation to apply similarity of appearance protection only in the counties within the Miami blue's historical range and have modified this final rule accordingly in response to these and other comments received. See Summary of Changes from Proposed Rule, below.

We intend to draw upon the State's management plan for the Miami blue and all other relevant sources during recovery planning and implementation efforts. We will be soliciting input from the State and other stakeholders, who are integral in the conservation of the subspecies, during recovery planning.

(21) *Comment:* The Florida Department of Environmental Protection (FDEP) found the proposed rule to be comprehensive and suggested no changes. The FDEP noted the thorough evaluation of research by Zhong *et al.* (2010), which demonstrated that a single treatment within normal mosquito control operations can kill substantial Miami blue larvae in targeted residential areas and, to a lesser extent, in adjacent nontarget areas. The FDEP suggested this research may indicate that normal mosquito control operations may have played a role in the historical decline of the Miami blue and other Keys insect fauna. The FDEP recommended that research be continued to better understand the impacts of mosquito control and exotic fire ants.

Our Response: We agree that additional research will be helpful in developing a more thorough understanding of impacts from mosquito control, fire ants, and other threats. We are interested in working with others to better understand and address threats.

Federal Agency Comments

(22) *Comment:* The Naval Air Station Key West (NAS) expressed its commitment to work proactively with the Service to address potential issues should the Miami blue be listed as endangered. The commenter was concerned that, if critical habitat was designated, this would have significant impacts on the Navy's ability to conduct mission-essential activities.

Our Response: We appreciate the Navy's assistance in the conservation of the Miami blue and acknowledge their concerns. We have worked cooperatively with the Navy regarding their Integrated Natural Resource Management Plan (INRMP) for NAS and realize it affords many provisions for successful ecosystem management and protections for listed species. We will coordinate with NAS to incorporate conservation actions for the Miami blue into their INRMP.

Public Comments

Comments Relating to Critical Habitat

(23) *Comment:* Several commenters encouraged the designation of critical habitat, emphasizing the need and importance of such designation, especially for reintroduction and recovery. One commenter stated that there is unquestionably habitat on the Keys and in south Florida that is critical to the butterfly's recovery. Another commenter stated that critical habitat designations are required to ensure successful reintroductions of Miami blue populations elsewhere in its historical range. These commenters indicated that such designation is imperative for achieving recovery goals for the Miami blue and recommended that high-quality target areas for reintroduction be listed as critical habitat. One commenter suggested that designating critical habitat has the benefit of doubling the likelihood that an endangered species will recover.

Our Response: We acknowledge that there are benefits to designating critical habitat, as the commenters suggest (see *Benefits to the Subspecies From Critical Habitat Designation,* below). For the Miami blue, we have determined that increased harm to the subspecies and its habitat outweighs the benefits that critical habitat may provide (see *Increased Threat to the Subspecies by Designating Critical Habitat* and *Increased Threat to the Subspecies Outweighs the Benefits of Critical Habitat Designation,* below).

We disagree that designation of critical habitat is required or needed for successful reintroductions of the Miami blue, or that it is imperative for achieving recovery. Landowner permission is needed to reintroduce endangered species, even if unoccupied critical habitat is present. Some private property owners in the Keys have reportedly threatened to clear vegetation from undeveloped parcels to avoid restrictions regarding the butterfly (M. Minno, *in litt.* 2011b; N. Pakhomoff-Spencer, consultant, pers. comm. 2011). Designation of critical habitat would also preclude the use of nonessential experimental populations (NEPs) under section 10(j) of the Act, a tool that could be useful to help reintroduce the subspecies in select areas within its historical range in the future. Section 10(j)(2) of the Act prohibits the use of NEPs where critical habitat is designated (the two are mutually exclusive). Overall, we believe that successful reintroductions and recovery will be dependent upon improved captive propagation and reintroduction techniques, removal of controllable threats, and cooperation of landowners, stakeholders, and partners.

Finally, with regard to the recommendation to include targeted high-quality reintroduction sites as critical habitat, there is currently no accepted, established list of high-quality reintroduction sites, as implied.

Preliminary assessments to determine the best potential reintroduction sites are outdated. Since originally assessed, additional populations of the Miami blue (using a different host plant) have been found, we have a better understanding of threats, and the captive colony no longer exists. We expect to reevaluate potential reintroduction sites to determine those most suitable with the help of our partners and prior to future captive propagation, reintroduction, and monitoring efforts.

(24) *Comment:* Two commenters suggested that it is not feasible to eliminate all threats throughout the Miami blue's historical range, but that designating critical habitat will have the benefit of identifying focused management zones for persistence. One commenter suggested that critical habitat should provide additional benefits in that spraying for mosquitoes would be prohibited, host plants would be completely protected, and invasive species would be removed. He argued that without designating critical habitat there are few regulatory mechanisms that will mitigate illicit activities contributing to habitat destruction at potential reintroduction sites within the historical range.

Another commenter acknowledged the value of designating critical habitat for conservation and management purposes and suggested that the limited amount of remaining vital habitat be identified for the Miami blue. He suggested that site assessments conducted during the unsuccessful reintroduction efforts could help identify this habitat. This commenter indicated that designating all undeveloped coastal areas as critical habitat is too sweeping and ignores the potential for more specific environmental requirements, which may help explain the failure of the reintroduction efforts. Additional studies to identify habitat requirements were recommended.

Our Response: We agree that it is not possible to eliminate all threats throughout the Miami blue's historical range and acknowledge that designating critical habitat could help focus management actions. However, we determined that designation of critical habitat is not prudent for the Miami blue for the reasons stated below (see *Critical Habitat and Prudency Determination* and explanatory sections that follow).

With regard to threats, it is not realistic to assume that critical habitat designation would remove threats such as mosquito-control pesticides, completely protect host plants, or guarantee that invasive species would be removed, as one commenter purports. Critical habitat only provides protections where there is a Federal nexus (*i.e.,* actions that come under the purview of section 7 of the Act) (see *Benefits to the Subspecies from Critical Habitat Designation,* below). Mosquito control activities are not normally considered Federal projects, and would therefore not typically be subject to section 7 review. Furthermore, a landowner is not obligated to conduct conservation actions, such as the removal of invasive plants, when critical habitat is designated.

We disagree with the view that there are few regulatory mechanisms that will mitigate activities contributing to habitat destruction within the subspecies' historical range. Sections 7, 9, and 10 of the Act (see *Available Conservation Measures,* below) can provide useful regulatory mechanisms that will help conserve the Miami blue in its current and historical range. In addition, listing facilitates proactive programs and partnerships that can help protect and restore habitats and implement recovery actions (*e.g.,* section 4 and 6 of the Act; see *Available Conservation Measures,* below). In short, some commenters may have overestimated the potential benefits of critical habitat designation and underestimated the regulatory protections that the Act confers simply when a species is listed as endangered.

Finally, we agree that additional studies to identify specific habitat requirements are needed. Such studies would be helpful to both understanding the Miami blue's specific physical and biological habitat needs and for increasing the likelihood of successful reintroductions in the future. These actions will likely be undertaken with researchers and others during recovery planning and implementation.

(25) *Comment:* One commenter stated that the conditions given under 50 CFR 424.12(a)(1) for a not prudent determination would apply to most endangered species, especially insects that maintain small populations. The commenter contended that the increased threat to the Miami blue from designating critical habitat would be minimal because most suitable habitat exists within protected State and Federal lands.

Our Response: We disagree that a ''not prudent'' determination would apply to most endangered species. However, we acknowledge that it may often apply to endangered insects and plants that are highly sought after by collectors, hobbyists, and enthusiasts (*e.g.,* butterflies, tiger beetles, orchids, cacti). Although we acknowledge that most suitable habitat for the Miami blue is on State, Federal, or other conservation land, we do not agree with the commenter's view that increased threat to the butterfly from designation would be minimal. In fact, we find that the increased threat may be substantial in that it could exacerbate the already serious threats of collection, vandalism, disturbance, fire, and other harm from humans (see *Increased Threat to the Subspecies by Designating Critical Habitat,* below).

(26) *Comment:* Two commenters suggested that since high-quality target areas for reintroduction are all located on Federal, State, or conservation lands, there would not be significant economic consequence to designating critical habitat.

Our Response: We agree that the majority of suitable and potential habitat for the Miami blue occurs on Federal, State, or conservation lands. Our determination is that critical habitat designation for the Miami blue is not prudent. Therefore, an economic analysis was not required by the Act and was not conducted.

Comments Related to Taxonomy and Current Distribution

(27) *Comment:* The National Environmental and Planning Agency of Jamaica provided comments prepared by the Scientific Authority of Jamaica regarding the relative abundance and distribution of the cassius blue butterfly in that country. It indicated that it did not have data to support the suspected decline in Jamaica and had insufficient evidence to concur with the proposal. The agency suggested a population and distribution study was needed to determine conservation status in Jamaica.

Our Response: We appreciate the comments provided. However, the proposed rule did not suggest listing the cassius blue butterfly on the basis of imperilment. Rather, it proposed threatened status for the cassius blue solely due to its similarity in appearance to the Miami blue, and to provide greater protection for the Miami blue. In response to comments received during the public comment period, the similarity of appearance aspect of the final rule has been modified. The Service no longer sees a need to list the cassius blue, ceraunus blue, or nickerbean blue butterflies as threatened throughout their ranges. Rather, we believe that prohibiting collection of these similar butterflies only in the historical range of the Miami blue in Florida is sufficient for minimizing the threat of collection of the Miami blue.

Therefore, the cassius blue will not be listed under the similarity of appearance provision of the Act in Jamaica (see Summary of Changes from Proposed Rule, below.).

(28) *Comment:* Five commenters expressed concern regarding taxonomy and current distribution. Another commenter stated that the question of taxonomic status has been settled since multiple, independent researchers have verified the unique standing of the Miami blue by genitalic dissection (See also Comment #29 and Response below).

One commenter, who had previously identified captive-reared BHSP specimens as *Cyclargus thomasi bethunebakeri,* noted limitations in contemporary specimens and available literature about *Cyclargus* taxa. This commenter indicated that there are morphological and genetic differences between historical and contemporary populations of *C. thomasi* in Florida [noting Saarinen (2009)] and suspected that these disparities may indicate the presence of a Cuban entity now in the lower Keys. However, he acknowledged that he was unaware of any detailed morphological or genetic investigations of the Cuban entity. Considering Florida's proximity to other West Indian populations, he suggested that it is possible that multiple genetic entities of *C. thomasi* have occurred (or do occur) in Florida, and the presence of a more genetically diverse metapopulation within the KWNWR may be the result of more recent immigrations from Cuba. Further, this commenter noted an unconfirmed report that captive-bred Miami blue larvae did not readily accept balloonvine, reinforcing his notion that historical and contemporary populations are not the same entity.

Another commenter stated that the Service does not have the necessary information to determine if *Cyclargus thomasi bethunebakeri* is globally endangered or not since *C. thomasi* has recently been reported from Cuba and appears to be secure there. He indicated that it has not been determined if the entity in Cuba is different from the subspecies in Florida and that it is possible that these are the same subspecies. He also noted that *C. thomasi bethunebakeri* has been reported from the Bimini Islands in the western Bahamas. In his view, the entity in Cuba may be the same subspecies and it may be secure; therefore, the Florida taxon is not endangered, and should not be listed at this time.

Another commenter noted that the *Cyclargus thomasi* complex was not well defined, citing Johnson and Balint (1995). This commenter recommended that the taxonomic status be clarified.

Another commenter indicated the differences between photographs she had taken from BHSP with those she had discovered within KWNWR. She suggested the possibility that the KWNWR colonies may more closely resemble those of Cuba and elsewhere, rather than those from mainland Florida. She noted that the range of the butterfly does not seem well documented in recent years, and that the full range outside of the known locations should be determined.

Our Response: We understand the commenters' questions and uncertainty regarding taxonomy and distribution. We disagree with the comment that the subspecies is not well defined or described. The best scientific and commercial information and evidence indicates that *Cyclargus thomasi bethunebakeri* is a distinct, well-described and examined taxon (see *Taxonomy,* above) and that its distribution is limited (see *Historical Distribution* and *Current Distribution*).

Some concerns over the taxonomy and current distribution are based on discussion of a similar looking blue butterfly recently documented in Cuba. Historically, the nickerbean blue, *Cyclargus ammon,* was reported from Cuba. However, Hernandez (2004, p. 100) indicated that an undetermined subspecies of *Cyclargus thomasi* is now also known to occur on the island. Craves (2004, p. 43) indicated that she observed *C. thomasi* commonly at two locations in Cuba: Cayo Paredon and Santiago de Cuba. Based on examination of photographs, she suggested that these appeared to be *C. t. bethunebakeri.* However, no specimens were collected and, to our knowledge, there have been no additional studies of the Cuban *C. thomasi.* Craves (2004, p. 43) suggested the possibility that *C. t. bethunebakeri* recolonized Florida from Cuba.

We acknowledge the concerns raised by some commenters regarding taxonomy, but we do not have any scientific evidence to suggest that *Cyclargus thomasi bethunebakeri* also now occurs in Cuba or that it recently immigrated from Cuba to Florida. Other subspecies of *C. thomasi* occur in the Caribbean (Smith *et al.* 1994, p. 129), and it is possible that the unidentified *C. thomasi* in Cuba is one of these subspecies, another subspecies that has not yet been described, or possibly *C. t. bethunebakeri.* Additional work to better understand the full range of the Miami blue outside of the known locations would be helpful. Surveys of remote areas in Florida are ongoing; additional surveys in the Bahamas (and Cuba) would be helpful. Additional research could help determine if other Caribbean taxa are also imperiled.

It is unlikely that *Cyclargus thomasi* has only recently established in the lower Keys, as one commenter suggested. There were few historical surveys for butterflies at BHSP or KWNWR; therefore, it is unknown how long the Miami blue occurred at these locations prior to their discoveries. By contrast, many of the other islands in the lower Keys have been continually monitored for butterflies for several decades. If the Miami blue had recently colonized the lower Keys, it seems likely that it would have attempted to establish at numerous locations along the chain of islands, thereby being observed and reported prior to ultimately colonizing BHSP and KWNWR.

The concern that captive Miami blue larvae may not have readily accepted balloonvine as the basis of historical and contemporary populations being different entities seems unfounded. Captive individuals and artificial conditions may produce responses that are different than those occurring in the wild. Available scientific literature documents a variety of host plants for the Miami blue (see *Life History* and *Habitat* under Background—and response to Comment #6, above). Balloonvine was likely only one of several legumes used by historical Miami blue populations.

Based on the best scientific information, including recent genetic work, we find that *Cyclargus thomasi bethunebakeri* is a distinct and unique entity, that it is limited in distribution (*i.e.,* Florida, possibly Bahamas), that it is imperiled, and that listing is warranted. We lack any substantial information or evidence that the Cuban entity is the same taxon and have no information on that entity's abundance or status.

(29) *Comment:* In support of our determination, one commenter, who had conducted her dissertation on the taxon, unequivocally stated that the Florida subspecies, *Cyclargus thomasi bethunebakeri,* is unique and imperiled. In addition to the work by multiple, independent scientists who have verified the unique standing of the Miami blue through dissection, this commenter cited her own additional genetic analyses, which compared genetic sequence data of a mitochondrial gene useful in elucidating species distinctions, and her finding of sequence differences between multiple specimens of *C. thomasi* from Florida, Cuba, and the Bahamas. The sequence data and genitalic dissections

make it possible to separate the *bethunebakeri* from others in the *C. thomasi* complex. This commenter definitively stated that *C. thomasi bethunebakeri* is unique and imperiled. She noted that other Caribbean taxa are also unique and recommended research to determine if these are also imperiled. Sequencing of specimens at additional mitochondrial and nuclear markers would be helpful in more fully understanding the relationship between Floridian and other Caribbean taxa of *Cyclargus thomasi*.

Our Response: We agree. Based on the best scientific information, including recent genetics work, we find that *Cyclargus thomasi bethunebakeri* is a distinct and unique entity, that it is limited in distribution (*i.e.,* Florida, possibly Bahamas), that it is imperiled, and that listing is warranted. We agree with the commenter's suggestion for additional research to help determine if other Caribbean taxa are also imperiled.

Comments Related to Threats

(30) *Comment:* One commenter provided considerable new information on exotic green iguanas within KWNWR, potential impacts on the Miami blue, and prospects for eradication. This commenter identified studies to determine if green iguanas are eating blackbead in KWNWR as an immediate research need. He also noted that, worldwide, there are no known cases in which an exotic reptile, once established in an area, has been eradicated (citing G.H. Rodda, pers. comm. 2011).

Our Response: We have incorporated new information pertaining to green iguanas within KWNWR into the text of this final rule (see *Summary of Factors Affecting the Species,* Factor E). We agree that determining iguana food sources, both at KWNWR and within habitat formerly occupied by Miami blues, is a crucial first step in preventing further harm to the Miami blue from this exotic species. Because Miami blues have historically fed on a variety of legumes, studies are needed to determine iguana seasonal dietary preferences in south Florida and the Keys. We are working with the U.S. Geological Survey (USGS), the State, researchers, and others to analyze gut contents of iguanas removed from current and historical locations. Preliminary gut content analyses conducted by FDEP and researchers have confirmed ingestion of at least one host plant (nickerbean) in the lower Keys (Jim Duquesnel, pers. comm. 2012).

We agree that there is an urgent need to better understand the extent of threat to the Miami blue and its host plants posed by iguanas at KWNWR and elsewhere. Efforts to better understand this threat and control or contain iguanas in select areas of Miami blue habitat are continuing. The State and other partners have been actively working to reduce the presence and impact of iguanas at BHSP. Efforts by FWC and the FDEP appear to have helped control impacts to host plants at BHSP.

Iguanas are well-established throughout the islands of KWNWR. While efforts have been made to assess this potential threat at the Refuge, we acknowledge the difficulties with controlling iguanas and likelihood that broad eradication efforts will be unsuccessful. In the short term, extensive iguana eradication or containment efforts may need to be focused in select occupied areas, future reintroduction sites, or other areas with greatest habitat potential, where damage to host plant is evident. Given the current distribution of iguanas in the Keys, any island has the potential to be quickly colonized or recolonized by iguanas, despite substantial control and containment efforts.

(31) *Comment:* Two commenters indicated that the role of fire in pine rockland habitats does not need to be discussed, because the Miami blue is a coastal butterfly that does not currently occur in fire-maintained habitats.

Our Response: Historically, the Miami blue was documented from a variety of habitat types, including pine rocklands (Calhoun *et al.* 2000, pp. 17–18) (see *Habitat*). We believe discussion of pine rocklands and the need to maintain this habitat with natural or prescribed fires is applicable, and have kept it in the final rule.

(32) *Comment:* One commenter indicated that mismanagement has been an ongoing problem and that the Miami blue is thriving at remote locations because humans have not burned, sprayed, cleared, or developed habitat. She believed that Federal listing will do nothing to save the Miami blue.

Our Response: We acknowledge that the Miami blue faces numerous threats (see *Summary of Factors Affecting the Species*) and that its persistence on a Refuge may be, in part, due to the absence of some threats. Protections under the Act (through sections 7, 9, and 10) and the recognition that immediately became available to the subspecies with Federal emergency listing (and will continue with permanent listing) will increase the likelihood that extinction can be prevented, and the subspecies can ultimately be recovered (see *Available Conservation Measures,* below).

(33) *Comment:* One commenter stated that the most likely threats to the Miami blue are exotic predatory ants and the fragmentation and loss of critical breeding areas.

Our Response: We acknowledge that the Miami blue faces numerous threats (see *Summary of Factors Affecting the Species*). Habitat loss and fragmentation and predation are two of many threats affecting the butterfly.

Forys *et al.* (2001, p. 256) found high mortality among immature giant swallowtails (*Papilio cresphontes*) from red imported fire ant (*Solenopsis invicta*) predation in experimental trials and suggested other butterflies in southern Florida might also be influenced. Similarly, Cannon (2006, p. 7) reported high mortality of giant and Bahamian (*Papilio andraemon*) swallowtail eggs from an exotic species of twig ant on Big Pine Key. Salvato and Salvato (2010, p. 95) extensively monitored the immature stages of the Federal candidate Florida leafwing (*Anaea troglodyta floridalis*) and reported mortality from a number of exotic and native predators, including ants.

We are not aware of any studies that have been conducted to specifically examine the role of exotic ants on the natural history of the Miami blue. Therefore, while we agree that exotic ants, as well as other invasive species, have likely played a role in the decline of the Miami blue, to date, no field studies have identified exotic ants as specific predators of this subspecies.

(34) *Comment:* Other commenters acknowledged that the Miami blue requires an active plan for reintroduction and that novel reintroduction schemes will be an important part of its recovery.

Our Response: We agree that captive propagation and reintroduction may be important components of the subspecies' survival and recovery, and that innovative methods may be needed. Actions need to be carefully planned, implemented, and monitored. Any future efforts should only be initiated after it has been determined that such actions will not harm the wild population, rigorous standards are met, and commitments are in place to increase the likelihood of success and maximize knowledge gained. Research with surrogate species may be helpful to better establish protocols and refine techniques for the Miami blue prior to propagation and reintroduction efforts.

(35) *Comment:* One commenter stated that listing will hamper conservation efforts and research because of legal

restrictions. He claimed that some private property owners in the Keys have already threatened to clear vegetation from undeveloped properties to avoid any restrictions. He cited inconsistent funding for research and restoration, lack of cooperation between Federal and State agencies in recent times, and hindrances from permitting requirements and reporting efforts. This commenter suggested that the successful reintroductions of the Atala hairstreak *(Eumaeus atala)* be studied as an example of cooperative efforts, which were only possible because that butterfly was not listed.

Our Response: We disagree with the commenter's view that listing will impede conservation efforts and research due to legal restrictions. Federal listing will increase the likelihood that extinction can be prevented and that the Miami blue may ultimately be recovered (see *Available Conservation Measures,* below). Funding under section 4 and section 6 of the Act may help implement actions that may be difficult to undertake otherwise. The need for a section 10 permit under the Act to conduct research on a species is dependent upon the nature of the activity and the likelihood for incidental take. Some research activities may require a permit; others may not. However, the reporting requirements of a section 10 permit provide additional benefit by ensuring the Service receives the most recent and best available scientific information. With the Miami blue population at critically low numbers, section 10 permits also allow us to control the amount of take allowed for research, which might otherwise threaten the subspecies through overutilization.

We agree with the commenter's view that funding can be inconsistent. In general, Federal funding is limited. However, Federal listing increases potential funding opportunities and funding sources.

We disagree with the commenter's assertion that State and Federal agencies have not worked cooperatively in recent times. Agencies regularly coordinate on Miami blue butterfly issues, needs, and actions. For example, State agencies have provided vessel transportation for researchers and staff conducting federally funded surveys in remote areas. Federal agencies have supported previous captive propagation efforts and more recently assisted in the formation of a State management plan.

While we agree that Atala hairstreak releases throughout Florida demonstrate how volunteer organizations can galvanize to work locally towards conservation, we question its applicability to the Miami blue situation. It is our understanding that Atala hairstreaks were reintroduced to numerous areas, including locations where they had not historically occurred. Any reintroduction efforts for the Miami blue would focus on the most suitable habitat within its historical range, with the cooperation of landowners.

There have been several successful reintroductions for endangered blue butterflies elsewhere in the United States, such as the Karner (*Plebejus samuelis*) or Mission blue (*Plebejus icarioides missionensis*). We are hopeful that researchers and other conservation partners will draw on guidance from these and other successful reintroductions prior to undertaking future captive propagation and reintroduction efforts for the Miami blue. State and Federal funding has been provided in support of previous captive propagation efforts for the Miami blue. Due to the subspecies' precarious status, it is imperative to identify the potential causes of failure from previous efforts before future efforts are undertaken.

(36) *Comment:* One commenter contended that mosquito control activities have had minimal impact on the Miami blue butterfly. A second commenter stated that the record clearly demonstrates that mosquito control adulticides (insecticides targeting adult mosquitos) have not been a primary cause (or even a substantial contributory secondary cause) to mortality in the Miami blue and ''its sibling species.'' A third commenter stated that mosquito spraying is not an issue because the remaining Miami blue colonies in the KWNWR are not sprayed.

Our Response: No comprehensive studies have been completed that examine the impact of current or historical mosquito control activities on Miami blue butterflies in the wild. Although there is no evidence of mosquito control impacts on wild Miami blue populations, potential impacts over the subspecies' historical range have never been examined. Recent research has shown that exposure to mosquito control chemicals in sufficient quantities can impact various butterfly species, including captive-bred Miami blue (Zhong *et al.* 2010 pp. 1967–1968; Hoang *et al.* 2011 pp. 1000–1002). Based on these findings, the Service determined that mosquito control pesticides can be a threat to the Miami blue.

(37) *Comment:* One commenter stated that Hennessey and Habeck (1991) found no adverse effect on insect populations due to pesticide drift. A second commenter stated that no harm was demonstrated in Hennessey and Habeck (1989), Hennessey and Habeck (1991), and Hennessey *et al.* (1992) when mosquito control chemicals drifted 750 meters into protected no-spray zones.

Another commenter cited two studies (Davis and Peterson 2008, Breidenbach and Szalay 2010) that demonstrated few deleterious effects on insect communities following mosquito control chemical application.

Our Response: With regard to the first comment relating to pesticide drift, the results of the aforementioned field study (all three references detail activities associated with just one field study) did not provide conclusive findings regarding the effects of mosquito control spraying on the two butterfly species examined (Florida leafwing and Bartram's hairstreak [*Strymon acis bartrami*]). A greater number of adult Florida leafwing butterflies was observed in untreated areas during one year of the study, but this difference was not observed in the second year of the study (Hennessey and Habeck 1991, p. 14). Additionally, the study revealed that one of the reference locations received adulticide deposition through aerial drift, thus compromising the utility of the location to be used as a reference site and making it difficult to discern any pesticide effects (Hennessey and Habeck 1991, pp. 29–30).

With regard to deleterious effects of pesticides, we agree with the other commenter's assertion that the two studies cited did not show dramatic effects on insect communities following mosquito control activities. There were exceptions in both studies where insect numbers declined following treatment events (Davis and Peterson 2008, pp. 274–276; Breidenbach and Szalay 2010, pp. 594–595). It also did not appear that any butterfly families were included in the study, thus making it difficult to draw any conclusions about mosquito control effects on butterflies.

(38) *Comment:* Two commenters stated that current mosquito control application methods are improved when compared to methods used in the Hennessey and Habeck (1991) study that documented drift of mosquito control chemicals. One of the commenters specifically stated that mosquito spray optimization utilizing smaller and more uniform insecticide aerosol droplets has been shown to mitigate exposure to nontarget organisms. Two studies are cited (Zhong *et al.* 2003, 2004) in support of this assertion. This same commenter also stated that the small droplets degrade rapidly and leave little or no residue at ground level.

Our Response: We acknowledge that mosquito control spraying technology has advanced in recent years. Despite these advances, recent research (Pierce 2009, pp. 2–15; Zhong *et al.* 2010, pp. 1966–1967; Pierce 2011, pp. 6–11; T. Bargar, USGS, pers. comm. 2011) has still documented quantifiable residues of mosquito control chemicals on filter pads and foliage in nontarget areas.

(39) *Comment:* Two commenters addressed the results of Zhong *et al.* (2010), a paper that assessed exposure and acute toxicity of late instar Miami blue larvae to aerially applied mosquito control adulticides in the field. One commenter noted that he has heard and read multiple comments regarding the mortality level of Miami blue caterpillars within a mosquito control spray zone from the Zhong *et al.* (2010) study, cited in the emergency rule. This same commenter noted that Miami blue caterpillar mortality in the ''drift zone'' did not differ statistically from control organisms that were 11 mi (18 km) from mosquito control chemical application. The second commenter noted that larval mortality was insignificant in the ''drift zone'', despite the fact that naled (organophosphate insecticide) residues were detected at least once in each of those locations. This commenter stated that these results may indicate that other variables need to be studied. Vitality of the larvae, uneven distribution of naled residue, and the effects of distance from the spray line on butterfly mortality under various wind conditions and spray drift offsets are all suggested as additional studies.

Our Response: The naled residues that were observed in the drift zone were lower in concentration than the residues in the spray zone (Zhong *et al.* 2010, p. 1966); therefore, it is not surprising that caterpillar mortality in the drift zone was significantly lower than in the spray zone. The mortality trend observed in mosquitoes placed in the spray, drift, and control zones also followed a clear dose-response similar to that of the butterfly caterpillars (Zhong *et al.* 2010, p. 1969). The vitality of the larvae used in the study is confirmed by the fact that no larval mortality was observed in the control zone (Zhong *et al.* 2010, p. 1969). The Service agrees with the second commenter's suggestion that naled residue distribution and the effects of distance from the spray line on butterfly mortality under various wind conditions and spray drift offsets should be studied further.

(40) *Comment:* One commenter provided quotes from a lepidopterist with experience studying butterflies in Florida. The lepidopterist presented a theory, based upon unpublished field observations, that mosquito control spraying may benefit butterfly species by decreasing parasitoids.

Our Response: The theory presented in this comment appears to be based solely on an individual's qualitative observations. No quantitative methods or data are given or cited. Concrete evidence in support of such a theory would need to be provided for further consideration.

(41) *Comment:* One commenter stated that risk-based assessments to address the probability of injury, based on actual field exposure, rather than hazard-based assessments that simply indicate the potential to cause injury and do not take into account environmentally relevant exposure scenarios, should be used when examining pesticide impacts to threatened and endangered species. They maintain these assessments should be made in terms of long-term population-level effects, rather than localized effects upon individual organisms. This would allow for ''inadvertent take'' provisions of the Act to be used.

Our Response: The Service agrees that risk-based assessments that take into account actual field exposure scenarios are an effective way to evaluate risk to threatened and endangered species. For example, in a recent study, field deposition values for naled on the National Key Deer Refuge (NKDR), Big Pine Key, were incorporated into a probabilistic risk assessment that predicted significant risk to common butterflies (Bargar 2012, pp. 1–7). Such risk assessments would examine direct effects on individual organisms, but would also be interpreted at the population level. This could be used to estimate take and incidental take under the Act.

(42) *Comment:* One commenter stated his support for recommendations made by the Imperiled Species Subcommittee of the Florida Coordinating Council on Mosquito Control, which include requiring buffers for known Miami blue populations, allowing for incidental take in areas receiving mosquito control, and supporting additional research into nontarget impacts from mosquito control. The commenter also indicated that it is important to definitively map populations of Miami blues to ensure that mosquito control activities are not unnecessarily curtailed.

Our Response: The Service supports the aforementioned recommendations of the Imperiled Species Subcommittee and was instrumental in the development of the recommendations. It is helpful to identify important Miami blue habitat to help reduce threats to the subspecies and to not unnecessarily restrict mosquito control operations. Mapping potential suitable habitat would be more inclusive and likely provide broader conservation benefits than mapping populations since populations can fluctuate seasonally (or even more frequently) based upon habitat quality, availability, and other factors.

(43) *Comment:* One commenter believed that the Service should not regulate the sale, purchase, or gifts of specimens of the Miami blue legally obtained before the rule was enacted. With regard to the exception for properly documented antique specimens, he noted that the butterfly was not even described until 1941 and that there are not likely to be many specimens at least 100 years old; if such specimens exist, these are probably the property of major museums, not private collectors.

Our Response: We disagree. We have determined that prohibiting the sale and purchase of Miami blue specimens obtained before this rule is enacted (but not specimens documented to be over 100 years old) will help deter collection and help safeguard the subspecies. This prohibition of sale or offering for sale automatically applies to all pre-Act specimens of species listed as endangered under the Act. Some authorized activities, with proper permits and documentation, would still be allowed (*e.g.,* exchange of museum specimens among permitted institutions). We agree that it is not likely that many exempted specimens of at least 100 years are in existence.

Summary of Changes From Proposed Rule

After consideration of the comments received during the public comment period (see above), we made changes to the final listing rule. Many small, nonsubstantive changes and corrections, not affecting the determination (*e.g.,* updating the Background section in response to comments, minor clarifications) were made throughout the document. All substantial changes relate to similarity of appearance under section 4(e) of the Act and applicable prohibitions and exceptions under section 4(d) of the Act.

These include the following:

(1) We reduced prohibitions for the similarity of appearance butterflies to include collection only. We have removed prohibitions regarding possession and trade for the similarity of appearance butterflies.

(2) We limited the collection prohibition for the similarity of appearance butterflies to only portions

of their ranges. Collection of the similarity of appearance butterflies is prohibited only within the historical range of the Miami blue.

(3) We modified the special rule under section 4(d) for the similarity of appearance butterflies to specify that prohibitions apply only to the act of collecting them in coastal south and central Florida within the historical range of the Miami blue butterfly.

(4) We modified our similarity of appearance determination to reflect the changes outlined above (see *Determination of Status*).

(5) We modified our discussion regarding the effects of the rule to reflect the changes outlined above (see *Effects of the Rule*).

See *Similarity of Appearance, Special Rule Under Section 4(d) of the Act, Determination of Status,* and *Effects of the Rule* below.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may determine a species to be endangered or threatened due to one or more of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Miami blue has experienced substantial destruction, modification, and curtailment of its habitat and range (see Background, above), with an estimated >99 percent decline in area occupied (FWC 2010, p. 11). Although many factors likely contributed to its decline, some of which may have operated synergistically, habitat loss, degradation, and fragmentation are undoubtedly major forces that contribute to its imperilment (Calhoun *et al.* 2002, pp. 13–19; Saarinen 2009, p. 36).

Human Population Growth and Development

The geographic range of this butterfly once extended from the Dry Tortugas north along the Florida coasts to about St. Petersburg and Daytona. It was most common on the southern mainland and the Keys, and more localized on the Gulf coast. Examination of museum collections indicated that specimens were common from the early 1900s to the 1980s; the butterfly was widely distributed, existing in a variety of locations in southern Florida for decades (Saarinen 2009, p. 46). However, through time, much of this subspecies' native habitat has been lost, degraded, or fragmented, especially on the mainland, largely from development and urban growth (Lenczewski 1980, p. 47; Minno and Emmel 1994, pp. 647–648; Calhoun *et al.* 2002, p. 18; Carroll and Loye 2006, p. 25).

On the east coast of Florida, the entire coastline in Palm Beach, Broward, and Miami-Dade Counties (as far south as Miami Beach) is densely urban, with only small remnants of native coastal vegetation conserved in fragmented natural areas. Most of the Gulf Coast barrier islands that previously supported the Miami blue, including Marco and Chokoloskee Islands, have experienced intense development pressure and undergone subsequent habitat loss (Calhoun *et al.* 2002, p. 18). In an independent survey of historical sites where the Miami blue had previously been observed or collected, half were found to be developed or no longer supporting host plants in 2002 (D. Fine, unpub. data, pers. comm. 2002).

Significant land use changes have occurred through time in south Florida. Considering political and economic structure and changes, Solecki (2001, pp. 339–356) divided Florida's land-use history into three broad eras: frontier era (1870–1930), development era (1931–1970), and globalization era (1971–present). Within the development era, Solecki (2001, p. 350) noted that: ''Tremendous change took place from the early 1950s to the early and mid-1970s. Between 1953 and 1973, nearly 5,800 km^2 (2,300 mi^2) (28,997 ha/year or 11,735 ac/year) of natural areas were lost to agricultural and urban land uses (Solecki and Walker, 2001).'' During this time, ''an almost continuous strip of urban development became present along the Atlantic coast'' and ''urban land uses became well established in the extreme southeastern part of the region, particularly around the cities of Miami and Fort Lauderdale, and along the entire coastline heading northward to West Palm Beach.''

Saarinen (2009, pp. 42, 46) examined museum collections in the context of Solecki's development eras and found that Miami blue records for Miami-Dade County were highest in the 1930s and 1940s, prior to massive land use changes and urbanization. Records from Monroe County (including the Keys) were most numerous in the 1970s (Saarinen 2009, p. 46). Calhoun (pers. comm. 2003b) suggested the butterfly reached peak abundance when balloonvine invaded clearings associated with the construction boom of the 1970s and 1980s in the northern Keys and southern mainland and became available as a suitable host plant. If so, this may have represented a change in primary host plant at a time when the subspecies was beginning to decline due to continued development and destruction of coastal habitat. Saarinen (2009, p. 46) could not correlate decreases in natural land areas with changes in the numbers collected (or abundance), due to several confounding factors (*e.g.,* increased pesticide use, exotic species). Calhoun *et al.* (2002, p. 13) also attributed the butterfly's decline to loss of habitat due to coastal development, but acknowledged that other factors such as succession, tropical storms, and mosquito control also likely exacerbated the decline (see Factor E).

Habitat loss and human population growth in coastal areas on the mainland and the Keys is continuing. The human population in south Florida has increased from less than 20,000 people in 1920 to more than 4.6 million by 1990 (Solecki 2001, p. 345). Monroe County and Miami-Dade County, two areas where the Miami blue was historically abundant, increased from less than 30,000 and 500,000 people in 1950, respectively, to more than 73,000 and 2.5 million in 2009 (*http://quickfacts.census.gov*). All available vacant land in the Keys is projected to be consumed by human population increases (*i.e.,* developed) by 2060, including lands not accessible by automobile (Zwick and Carr 2006, p. 14). Scenarios developed by Massachusetts Institute of Technology (MIT) urban studies and planning department staff (Vargas-Moreno and Flaxman 2010, pp. 1–8) included both trend and doubling population estimates combined with climate change factors (see below) and show significant impacts on remaining conservation lands, including the refuges, within the Keys. While the rate of development in portions of south Florida has slowed in recent years, habitat loss and

degradation, especially in desirable coastal areas, continues and is expected to increase.

Although extensive loss and fragmentation of habitat has occurred, significant areas of suitable larval host plants still remain on private and public lands. Results from surveys (2002–2003) within south Florida and the Keys showed that numerous areas still contained host plants (Emmel and Daniels 2004, pp. 3–6). Results from similar surveys in 2007–2009 suggested that 14 of 16 sites on the mainland and 20 of 22 in the Keys contained suitable habitat (Emmel and Daniels 2009, pp. 6–8). Other researchers noted that larval host plants are common in the Keys (Carroll and Loye 2006, p. 24; Minno and Minno 2009, p. 9). A search of IRC's database suggests that 79 conservation areas in south Florida contain *Caesalpinia* spp., 39 areas contain *Cardiospermum* spp., and 77 contain *Pithecellobium* spp. (*www.regionalconservation.org/ircs/database/search*). With significant areas of host plants still remaining in portions of the butterfly's range, there is potential for additional populations of the Miami blue to exist.

Acute habitat fragmentation appears to have severely diminished the Miami blue's ability to repopulate formerly inhabited sites or to successfully locate host plants in new areas (Calhoun *et al.* 2002, p. 18). Although larval host plants remain locally common, the disappearance of core populations and extent of habitat fragmentation may now prevent the subspecies from colonizing new areas (J. Calhoun, pers. comm. 2003b). The Miami blue appears sedentary and is not known to travel far from pockets of larval host plants and adult nectar sources (J. Calhoun, pers. comm. 2003b; Emmel and Daniels 2004, pp. 6, 13). The presence of adult nectar sources proximal to larval host plants is critical to the Miami blue and may help explain its absence from areas that contain high larval host plant abundance but few nectar sources (J. Calhoun, pers. comm. 2003b; Emmel and Daniels 2004, p. 13).

Land Management Practices

Land management practices that remove larval host plants and nectar sources can be a threat to the Miami blue. Some actions on public conservation lands may have negatively affected occupied habitat, but the extent of this impact is not known. For example, the Miami blue had been sighted in DJSP in 1996, but following removal of balloonvine as part of routine land management, no adults were observed (L. Cooper, pers. comm. 2002; J. Calhoun, pers. comm. 2003b; M. Salvato, pers. comm. 2003). In 2001, following the return of balloonvine, a single adult was observed (J. Calhoun, pers. comm. 2003b). Calhoun noted that the silver-banded hairstreak (*Chlorostrymon simaethis*), which also feeds on balloonvine, had also returned to the site. The silver-banded hairstreak has rebounded substantially on northern Key Largo within disturbed areas of DJSP; if any extant Miami blues remain on the island, reestablishment in this area is possible.

Removal of nickerbean as part of trail maintenance and impacts to a tree resulting from placement of a facility may have impacted the south colony at BHSP in 2002 (J. Daniels, pers. comm. 2002; P. Halupa, pers. obs. 2002). The tree was an apparent assembly area for display by butterflies during courtship (J. Daniels, pers. comm. 2002). Damage to host plant and nectar sources from trimming and mowing during the dry season and herbivory by iguanas (see Factor E) impacted habitat conditions at BHSP in 2010 (D. Olle, NABA, pers. comm. 2010). More recently, the FDEP has worked to improve habitat conditions at BHSP through plantings, modification of its mowing practices, removal of iguanas, protection of sensitive areas, and other actions (R. Zambrano, FWC, pers. comm. 2010; D. Cook, pers. comm. 2010a, 2010b; Janice Duquesnel, Florida Park Service [FPS], pers. comm. 2010a, 2010b; Jim Duquesnel, pers. comm. 2010, 2011b; E. Kiefer, pers. comm. 2011a).

Maintenance, including pruning of host vegetation along trails and roadsides, use of herbicides, and impacts from other projects could lead to direct mortality in occupied habitats (Emmel and Daniels 2004, p. 14). Habitat previously supporting immature stages of the butterfly on West Summerland Key is subject to periodic mowing for road maintenance by the Florida Department of Transportation (J. Daniels, pers. comm. 2003c); the butterfly no longer occurs at this location (Emmel and Daniels 2004, p. 3; 2009, p. 8). Since Miami blues appear sedentary with limited dispersal capabilities, alteration of even small habitat patches may be deleterious.

Removal of host plants from conservation lands does not appear to be occurring on any large scale at this time. IRC has conducted extensive plant inventories on conservation lands within south Florida and is not aware of any attempts to eradicate balloonvine and noted that gray nickerbean has only rarely been controlled (*i.e.,* purposefully removed or pruned, followed with herbicide treatment) (K. Bradley, pers. comm. 2002). Nickerbean is reported to occur in all of the State parks in the Keys. It is not removed, but where it is a safety hazard for visitors, such as when overgrowing into trails, it is trimmed (Janice Duquesnel, pers. comm. 2003). Removal of host plants in or near occupied habitat remains a concern, given the subspecies' small population size, isolated occurrences, and limited dispersal capabilities (see Factor E).

Lack of prescribed fire on public lands may have adversely affected the Miami blue through time, but impacts are unclear. In addition to being found within coastal areas and hardwood hammocks, the Miami blue was also reported within tropical pinelands, a fire-dependent habitat (Minno and Emmel 1993, p. 134; Calhoun *et al.* 2002, p. 18). Calhoun *et al.* (2002, p. 18) reported that, until the early 1990s, the Miami blue most commonly occurred within pine rocklands on Big Pine Key. In the absence of fire, pine rockland often progresses to hardwood hammock. Lack of fire may have resulted in habitat loss; however, the extent to which this condition occurred is unclear and difficult to assess. Since the Miami blue is presumably sedentary, changes in vegetation due to this and other land management practices may have exacerbated the effects of fragmentation.

As part of its listing process, the FWC has completed a biological status review and management plan for the subspecies (FWC 2003, pp. 1–26). This management plan was recently revised (FWC 2010, pp. ii–39). Although the management plan is a fundamental step in outlining conservation needs, it may be insufficient for achieving conservation goals and long-term persistence. Recommended conservation strategies and actions within the plan are voluntary and dependent upon adequate funding, staffing, and the cooperation and participation of multiple agencies and private entities, which may or may not be available or able to assist. Conservation strategies include suggested actions to maintain, protect, and monitor known metapopulations; establish new metapopulations; and conduct additional research to support conservation (FWC 2010, pp. 17–26).

In summary, a variety of land management practices on public lands (*e.g.,* removal of host plants, mowing of nectar sources, and lack of prescribed fires) may have adversely affected the Miami blue and its habitat historically and continues to do so currently.

Climate Change and Sea Level Rise

Our analyses under the Act include consideration of ongoing and projected

changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean (average) and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Climatic changes, including sea level rise, are major threats to south Florida, including the Miami blue and its habitat. In general, the IPCC reported that the warming of the world's climate system is unequivocal based on documented increases in global average air and ocean temperatures, unprecedented melting of snow and ice, and rising average sea level (IPCC 2007, p. 2; 2008, p. 15). On a global scale, sea level rise results from the thermal expansion of warming ocean water, water input to oceans from the melting of ice sheets, glaciers, and ice caps, and the addition of water from terrestrial systems (United Nations (UN) 2009, p. 26). Sea level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program [CCSP] 2008, pp. 5–31, 5–32). The long-term record at Key West shows that sea level rose on average 0.088 inches (0.224 cm) annually between 1913 and 2006 (National Oceanographic and Atmospheric Administration [NOAA] 2008, p. 1). This equates to approximately 8.76 inches (22.3 cm) in 100 years (NOAA 2008, p. 1).

In a technical paper following its 2007 report, the IPCC (2008, p. 28) emphasized it is very likely that the average rate of sea level rise during the 21st century will exceed that from 1961 to 2003, although it was projected to have substantial geographical variability. Partial loss of the Greenland and Antarctic ice sheets could result in many feet (several meters) of sea level rise, major changes in coastlines, and inundation of low-lying areas (IPCC 2008, pp. 28–29). Low-lying islands and river deltas will incur the largest impacts (IPCC 2008, pp. 28–29). According to CCSP (2008, p. 5–31), much of low-lying, coastal south Florida ''will be underwater or inundated with salt water in the coming century.'' This means that most occupied, suitable, and potential habitat for Miami blue will likely be either submerged or affected by increased flooding.

The 2007 IPCC report found a 90 percent probability of an additional 7 to 23 inches (18–58 cm) and possibly as high as many feet (several meters) of sea level rise by 2100 in the Keys. This would cause major changes to coastlines and inundation of low-lying areas like the Keys (IPCC 2008, pp. 28–29). The IPCC (2008, pp. 3, 103) concluded that climate change is likely to increase the occurrence of saltwater intrusion as sea level rises. Since the 1930s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 9, 12–13), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155).

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. In the Keys, elevational differences between such communities are very slight (Ross *et al.* 1994, p. 146), and horizontal distances are also small. Human developments will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6). For the Miami blue, this means that much of the butterfly's habitat in the Keys, as well as habitat in other parts of its historical range, will likely change as vegetation changes. Any deleterious changes to important host plants and nectar sources could further diminish the likelihood of the subspecies' survival and recovery.

The Nature Conservancy (TNC) (2010, pp. 1–4) used Light Detection and Ranging (LIDAR) remote sensing technology to derive digital elevation models and project future shorelines and distribution of habitat types for Big Pine Key based on sea level rise projections by 2100, ranging from the best case to worst case scenarios described by current scientific literature. In the Keys, models projected that sea level rise will first result in the conversion of habitat and eventually the complete inundation of habitat. In the best case scenario, a rise of 7 inches (18 cm) would result in the inundation of 1,840 ac (745 ha) (34 percent) of Big Pine Key and the loss of 11 percent of the island's upland habitat (TNC 2010, p. 1). In the worst case scenario, a rise of 4.6 feet (140 cm) would result in the inundation of about 5,950 ac (2,409 ha) (96 percent) and the loss of all upland habitat (TNC 2010, p. 1). If modeling is accurate, under the worst case scenario, even upland habitat on Big Pine Key will become submerged, thereby making the butterfly's potential recolonization or survival at this and other low-lying locations in the Keys very unlikely.

Similarly, using a spatially explicit model for the Keys, Ross *et al.* (2009, p. 473) found that mangrove habitats will expand steadily at the expense of upland and traditional habitats as sea level rises. Most of the upland and transitional habitat in the central portion of Sugarloaf Key is projected to be lost with a 0.2-meter rise (0.7-foot rise) in sea level; a 0.5-meter rise (1.6-foot rise) in sea level can result in a 95 percent loss of upland habitat by 2100 (Ross *et al.* 2009, p. 473). Furthermore, Ross *et al.* (2009, pp. 471–478) suggested that interactions between sea level rise and pulse disturbances (*e.g.,* storm surges or fire [see Factor E]) can cause vegetation to change sooner than projected based on sea level alone.

Scientific evidence that has emerged since the publication of the IPCC Report (2007) indicates an acceleration in global climate change. Important aspects of climate change seem to have been underestimated previously, and the resulting impacts are being felt sooner. For example, early signs of change suggest that the 1 °C of global warming the world has experienced to date may have already triggered the first tipping point of the Earth's climate system—the disappearance of summer Arctic sea ice. This process could lead to rapid and abrupt climate change, rather than the gradual changes that were forecasted. Other processes to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity) (see Factor E). The MIT scenarios combine various levels of sea level rise, temperature change, and precipitation differences with population, policy assumptions, and conservation funding changes. All of the scenarios, from small climate change shifts to major changes, will have significant effects on the Keys.

Several recent scientific publications have also addressed problems that the IPCC's approach had in accounting for the observed level of sea level rise in the late 20th and early 21st centuries, and yielded new projections which reflect the possibility of rapid contributions from ice sheet dynamics beyond surface melting (see summaries by Church *et al.* 2010, Rahmstorf 2010, and Nicholls *et al.* 2011). The ranges of recent projections of global sea level rise (Pfeffer *et al.,* 2008, p. 1340, Vermeer & Rahmstorf 2009, p. 21530, Grinsted *et al.,* 2010, pp. 469–470, Jevrejeva *et al.,* 2010, L07703, p. 4, (GCCUS) 2009, p. 25) all indicate substantially higher levels than the projection by the IPCC in 2007, suggesting that the impact of sea level rise on south Florida could be even greater than indicated above. These recent studies also show a much larger difference (approximately 3 to 4 ft (0.9 to 1.2 m)) from the low to the high ends of the ranges, which indicates the magnitude of global mean sea level rise at the end of this century is still quite uncertain.

Rising sea level is an acute threat to all sites known to currently support the Miami blue (Cannon *et al.* 2010, p. 852), and it appears that habitat is now being lost (T. Wilmers, pers. comm. 2012a). Most occupied sites are <1 meter (1.09 yd) above sea level, and none are >2 meter (2.18 yd) above sea level (Cannon *et al.* 2010, p. 852). Prominent beach erosion and narrowing of dunes and coastal strands have been documented within Boca Grande and at least one island within the Marquesas (Cannon *et al.* 2010, p. 852). Considerable blackbead on one island has eroded into the sea (T. Wilmers, pers. comm. 2012a).

Summary of Factor A

We have identified a number of threats to the habitat of the Miami blue which have operated in the past, are impacting the subspecies now, and will continue to impact the subspecies in the future. The decline of butterflies in south Florida is primarily the result of the long-lasting effects of habitat loss, degradation, and modification from human population growth and associated development and agriculture. Environmental effects resulting from climatic change, including sea level rise, are expected to become severe in the future and result in additional habitat losses. Although efforts have been made to restore habitat in some areas, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future. Therefore, based on our analysis of the best available information, present and future loss and modification of the subspecies' habitat is a significant threat to the subspecies throughout all of its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collection

Rare butterflies and moths are highly prized by collectors, and an international trade exists in specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Collins and Morris 1985, pp. 155–179; Morris *et al.* 1991, pp. 332–334; Williams 1996, pp. 30–37). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice [USDJ] 1993, pp. 1–3; *United States* v. *Skalski et al.,* Case No. CR9320137, U.S. District Court for the Northern District of California [USDC] 1993, pp. 1–86). In general, the rarer the species, the more valuable it is; prices can exceed $25,000 for exceedingly rare specimens. For example, during a 4-year investigation, special agents of the Service's Office of Law Enforcement executed warrants and seized more than 30,000 endangered and protected butterflies and beetles, with a total wholesale commercial market value of about $90,000 in the United States (USDJ 1995, pp. 1–4). In another case, special agents found at least 13 species protected under the Act, and another 130 species illegally taken from lands administered by the Department of the Interior and other State lands (USDC 1993, pp. 1–86; Service 1995, pp. 1–2). Law enforcement agents routinely see butterfly species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) during port inspections in Florida, often without import declarations or the required CITES permits (E. McKissick, Service Law Enforcement, pers. comm. 2011).

Several listings of butterflies as endangered or threatened species under the Act have been based, at least partially, on intense collection pressure. Notably, the Saint Francis' satyr (*Neonympha mitchellii francisci*) was emergency-listed as endangered on April 18, 1994 (59 FR 18324). The Saint Francis' satyr was demonstrated to have been significantly impacted by collectors in just a 3-year period (59 FR 18324). The Callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*) were listed as endangered on December 5, 1997 (62 FR 64306), partially due to overcollection. The Blackburn's sphinx moth (*Manduca blackburni*) was listed as endangered on February 1, 2000 (65 FR 4770), partially due to overcollection by private and commercial collectors. The Schaus swallowtail (*Heraclides [Papilio] aristodemus ponceanus*), the only other federally listed butterfly in Florida, was reclassified from threatened to endangered in 1984 due to its continued decline (49 FR 34501). At the time of its original listing, some believed that collection represented a threat. As the Schaus decreased in distribution and abundance, collection was estimated to be a greater threat than at the time of listing (49 FR 34501).

Collection was cited as a threat to the Miami blue in both the original and subsequent petitions for emergency listing. The State's management plan for the Miami blue acknowledges that butterfly collecting may stress small, localized populations and lead to the loss of individuals and genetic variability, but also indicates that there is no evidence or information on current or past collection pressure on the Miami blue (FWC 2010, p. 13). Butterflies in small populations are vulnerable to harm from collection (Gall 1984, p. 133). A population may be reduced to below sustainable numbers (Allee effect) by removal of females, reducing the probability that new colonies will be founded. Collectors can pose threats to butterflies because they may be unable to recognize when they are depleting colonies below the thresholds of survival or recovery (Collins and Morris 1985, pp. 162–165). There is ample evidence of collectors impacting other imperiled and endangered butterflies (Gochfeld and Burger 1997, pp. 208–209), host plants (Cech and Tudor 2005, p. 55), and even contributing to extirpations (Duffey 1968, p. 94). For example, the federally endangered Mitchell's satyr (*Neonympha mitchellii mitchellii*) is believed to have been extirpated from New Jersey due to overcollecting (57 FR 21567; Gochfeld and Burger 1997, p. 209).

Although we do not have evidence of collection of the Miami blue, we do have evidence of illegal collection of other butterflies from Federal lands in south Florida, including the endangered Schaus swallowtail. In 1993, three defendants were indicted for conspiracy to violate the wildlife laws of the United States, including the Act, the Lacey Act, and 18 U.S.C. 371 (USDC 1993, p. 1). Violations involved numerous listed, imperiled, and common species from many locales; defendants later pled guilty to the felonies (Service 1995, p. 1). As part of the evidence cited in the case, defendants exchanged butterflies

taken from County and Federal lands in Florida and acknowledged that it was best to trade ''under the table'' to avoid permits and ''extra red tape'' because some were on the endangered species list (USDC 1993, p. 9). Acknowledging the difficulties in obtaining Schaus swallowtail, defendants indicated that they would traffic amongst each other to exchange a Schaus for other extremely rare butterflies (USDC 1993, p. 10). These defendants engaged in interstate commerce, exchanging a male Schaus in 1984 in the course of a commercial activity (USDC 1993, p. 11). One defendant also trafficked with a collector in Florida, dealing the federally listed San Bruno elfin butterfly (*Callophrys mossii bayensis*) (USDC 1993, p. 67).

Illegal collection of butterflies on State, Federal, and other lands in Florida appears ongoing, prevalent, and damaging. As part of the aforementioned case, one defendant, who admitted getting caught collecting within ENP and Loxahatchee National Wildlife Refuge, stated that he ''got away with it each time, simply claiming ignorance of the laws * * *.'' (USDC 1993, p. 13). Another defendant detailed his poaching in Florida and acquisition of federally endangered butterflies, acknowledging that he had ''fared very well, going specifically after rare stuff'' (USDC 1993, pp. 28–29). The same defendant offered to traffic atala hairstreaks *(Eumaeus atala),* noting that he did not do very well and had only taken about ''600 bugs in 9 days'' and that this number seemed poor for Florida (USDC 1993, p. 46). He further stated that collecting had become difficult in Florida due to restrictions and extreme loss of habitat, admitting that he needed to poach rare butterflies from protected parks (USDC 1993, p. 45). Methods to poach wildlife and means to evade wildlife regulations, laws, and law enforcement were given as part of the evidence (USDC 1993, pp. 32–33). In a separate incident in 2008, an individual was observed attempting to take butterflies from Service lands in the Keys (D. Pharo, pers. comm. 2008). When confronted by a FWC officer, he lied about his activities; a live swallowtail butterfly (unidentified) was found in an envelope on his person, a collapsible butterfly net was found in a nearby area, and a cooler containing other live butterfly species was in his car (D. Pharo, pers. comm. 2008).

Additionally, we are aware of and have documented evidence of interest in the collection of other imperiled butterflies in south Florida. In the aforementioned indictment, one defendant noted that there was a ''huge demand for Florida stuff,'' that he knew ''exactly where all the rare stuff is found,'' that he ''can readily get material,'' and that in most cases he would ''have to poach the material from protected parks'' (USDC 1993, p. 44). More recently, one commenter stated that she has been contacted by someone interested in acquiring rare butterflies (see Comment #5 and Response above). In addition, Salvato (pers. comm. 2011e) has also been contacted by several individuals requesting specimens of two Federal candidates, the Florida leafwing and Bartram's hairstreak, or seeking information regarding locations where they may be collected in the field. In addition, interest in the collection of the Florida leafwing was posted by two parties on at least one Web site in 2010 along with advice on where and how to bait trap, despite the fact that this butterfly mainly occurs on Federal lands within ENP. Thus, there is established and ongoing collection pressure for rare butterflies, including two other highly imperiled candidate species in south Florida.

We are also aware of multiple Web sites that offer or had offered specimens of south Florida butterflies for sale that are candidates for listing under the Act (M. Minno, pers. comm. 2009; C. Nagano, pers. comm. 2011; D. Olle, pers. comm. 2011). Until recently, one Web site offered male and female Florida leafwing specimens for €110.00 and €60.00 (euros), respectively (approximately $144 and $78). It is unclear from where the specimens originated or when these were collected, but this butterfly is now mainly restricted to ENP. The same Web site offered specimens of Bartram's hairstreak for €10.00 ($13). Although the specifics on its collection are not clear, this butterfly now mainly occurs on protected Federal, State, and County lands. The same Web site offers specimens of other butterflies similar in appearance to the Miami blue; the cassius blue is available for €4.00–10.00 ($5–$13). Additionally, other subspecies of *Cyclargus thomasi* that occur in foreign countries are also for sale. It is clear that a market currently exists for both imperiled species and those similar in appearance to the Miami blue.

The potential for unauthorized or illegal collection of the Miami blue (eggs, larvae, pupae, or adults) exists, despite its State-threatened status and the protections provided on Federal (and State) land. Illegal collection could occur without detection at remote islands of KWNWR because these areas are difficult to patrol. The localized distribution and small population size render this butterfly highly vulnerable to impacts from collection. At this time, removal of any individuals may have devastating consequences to the survival of the subspecies. Although the Miami blue is no longer believed to be present at BHSP, its return is possible. At BHSP, the butterfly, like other wildlife and plant species within the Florida park system, is protected from unauthorized collection (Chapter 62 D–2.013(5)) (see Factor D). However, because BHSP is so heavily used, continual monitoring for illegal collections is a challenge. Daniels (pers. comm. 2002) believed that additional patrols would be helpful because unauthorized collection of specimens is possible, even though collection is prohibited. In addition, any colonies that might be found or become established outside of BHSP or other protected sites would also not be patrolled and would be at risk of collection.

Although the Miami blue's status as a State-threatened species provides some protection, this protection does not include provisions for other species of blues that are similar in appearance. Therefore, it is quite possible that collectors authorized to collect similar species may inadvertently (or purposefully) collect the Miami blue butterfly thinking it was, or planning to claim they thought it was, the cassius blue, nickerbean blue, or ceraunus blue, which can also occur in the same general geographical area and habitat type. Federal listing of other similar butterflies can partially reduce this threat (see *Similarity of Appearance* below) and provide added protective measures for the Miami blue above those afforded by the State.

In summary, due to the few metapopulations, small population size, restricted range, and remoteness of occupied habitat, we have determined that collection is a significant threat to the subspecies and could potentially occur at any time. Even limited collection from the small population in KWNWR (or other populations, if discovered) could have deleterious effects on reproductive and genetic viability and thus could contribute to its extinction.

Scientific Research and Conservation Efforts

Some techniques (*e.g.,* capture, handling) used to understand or monitor the Miami blue have the potential to cause harm to individuals or habitat. Visual surveys, transect counts, and netting for identification purposes have been performed during scientific research and conservation efforts with the potential to disturb or

injure individuals or damage habitat. Mark-recapture, a common method used to determine population size, has been used by some researchers to monitor Miami blue populations. This method has received some criticism. While mark-recapture may be preferable to other sampling estimates (*e.g.,* count-based transects) in obtaining demographic data when used in a proper design on appropriate species, such techniques may also result in deleterious impacts to captured butterflies (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239; Haddad *et al.* 2008, pp. 929–940). Although effects may vary depending upon taxon, technique, or other factors, some studies suggest that marking may damage or kill butterflies or alter their behaviors (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239). Murphy (1988, p. 236) and Mattoni *et al.* (2001, p. 198) indicated that studies on various lycaenids have demonstrated mortality and altered behavior as a result of marking. Conversely, other studies have found that marking did not harm individual butterflies or populations (Gall 1984, pp. 139–154; Orive and Baughman 1989, p. 246; Haddad *et al.* 2008, p. 938). No studies have been conducted to determine the potential effects of marking on the Miami blue. Although data are lacking, researchers permitted to use such techniques have been confident in their abilities to employ the techniques safely with minimal effect on individuals handled. Researchers currently studying the population within KWNWR have opted not to use mark-release-recapture techniques due to the potential for damage to this small, fragile butterfly (Haddad and Wilson 2011, p. 3).

Captive propagation and reintroduction activities may present risks if wild populations are impacted or if the species is introduced to new or inappropriate areas outside of its historical range (65 FR 56916–56922, September 20, 2000). Although butterflies were successfully reared in captivity at the UF with the support of State and Federal agencies, efforts to reintroduce the Miami blue to portions of its historical range did not result in the establishment of any new populations (Emmel and Daniels 2009, pp. 4–5; FWC 2010, p. 8). While some monitoring occurred following releases, it is not clear why captive-reared individuals did not persist in the wild. Perhaps experiments using surrogate species (*e.g.,* other lycaenids) and more structured and intense monitoring following releases can help elucidate possible causes for failure and improve chances for reestablishment in the future.

Declines in the captive colony in 2005 and 2006 were attributed to a baculovirus; consequently, this captive colony was terminated after 30 generations and another was started with new stock from BHSP (Saarinen 2009, p. 92). Baculovirus infections are capable of devastating both laboratory and wild butterfly populations (Saarinen 2009, pp. 99, 119). Irrevocable consequences may occur if a pathogen is transferred from laboratory-reared to wild populations. Genetic diversity within the captive colony was lost over time (between generations) (Saarinen 2009, p. 100). At one point, the captive colony was not infused with new genetic material for approximately 1 year due to low numbers within the wild population. As a result, decreases in genetic diversity, allelic richness, and number of individuals produced occurred during this time (Saarinen 2009, p. 100). While captive propagation and reintroduction efforts offer enormous conservation potential, there can be associated risks and ramifications to both wild and captive-reared individuals and populations.

The use of captive-reared Miami blues in pesticide-use and life-history studies can be questioned and has been criticized by some (FWC 2010, p. 10). All experiments were conducted with captive-reared individuals; no wild individuals were used. Individuals used in experiments were not intended for release back into the wild or were reared specifically for this purpose. Researchers involved with the captive colony and others conducting scientific studies or other conservation efforts were authorized by appropriate agencies to conduct such work.

Summary of Factor B

Collection interest of imperiled butterflies is high, and there are ample examples of collection pressure contributing to extirpations. Although we do not have information indicating that Miami blues are being collected, we consider collection to be a significant threat to the subspecies due to the few remaining metapopulations, small population size, restricted range, and remoteness of occupied habitat, and because collection could potentially occur at any time. Even limited collection from the remaining metapopulation could have deleterious effects on reproductive and genetic viability of the subspecies and could contribute to its extinction.

Captive propagation and reintroduction may be important components of the subspecies' survival and recovery, but such actions need to be carefully planned, implemented, and monitored. Any future efforts should only be initiated after it has been determined that such actions will not harm the wild population, rigorous standards are met, and commitments are in place to increase the likelihood of success and maximize knowledge gained.

Based on our analysis of the best available information, there is no evidence to suggest that its vulnerability to collection and risks associated with scientific or conservation efforts will change in the future.

C. Disease or Predation

The effects of disease or predation are not well known. Because the Miami blue is known from only a few locations and population size appears low, disease and predation could pose a threat to its survival.

Disease

A baculovirus was confirmed within the captive colony, and infection caused the death of Miami blue larvae in captivity (see Factor B above) (Saarinen 2009, p. 120). Pathogens have affected other insect captive-breeding programs, however, this was the first time a baculovirus was found to affect a captive colony of an endangered Lepidopteran (Saarinen 2009, p. 120). A baculovirus or other disease or pathogens have the potential to destroy wild populations (Saarinen 2009, p. 99). Nice *et al.* (2009, p. 3137) identified widespread infection from the endosymbiotic bacterial *Wolbachia* within western populations of the endangered Karner blue *(Lycaeides samuelis)* and indicated the bacteria may also pose a significant threat towards other endangered arthropods. Plant pathogens could also negatively impact host plant survival, host growth, or the production of terminal host growth available to developing larvae (Emmel and Daniels 2004, p. 14). At this time, there is no information to suggest that disease or pathogens are affecting Miami blue butterflies or host plants in the wild.

Predation

Predation of adults or immature stages was not observed during monitoring at BHSP, despite the presence of potential predators (Emmel and Daniels 2004, p. 12; Trager 2009, p. 152). Several species of social wasps, specifically paper wasps (*Polistes*) and yellow jackets (*Vespula*), are known to depredate Lepidoptera on nickerbean and surrounding vegetation at BHSP and other sites with suitable habitat, but

predation on Miami blue larvae was not observed (Trager 2009, p. 152). Carroll and Loye (2006, p. 18) encountered a parasitic wasp, *Lisseurytomella flava,* during their studies of the balloonvine insects on northern Key Largo during the late 1980s. No wasp parasitism towards Miami blue larvae was noted (Carroll and Loye 2006, p. 24). However, this wasp, along with the Miami blue, was absent from continued balloonvine sampling in 2003, suggesting the wasp may have used the butterfly as host.

Cannon *et al.* (2007, p. 16) observed wasps (unidentified) eating Miami blue larvae at KWNWR; wasps and dragonflies were also observed to chase adults in flight. Adult Miami blues were found entrapped in the webs of silver orb spiders (*Argiope argentata*) (Cannon *et al.* 2007, p. 16). Trager (2009, pp. 149, 153–154) indicated that the Miami blue is likely depredated under natural conditions, but only predation by an adult brown anole lizard (*Anolis sagrei*) was observed during field studies. Iguanas likely consume eggs and pupae when opportunistically feeding on host plants (P. Hughes, pers. comm. 2009; Daniels 2009, p. 5; FWC 2010, p. 13), especially since the butterfly uses the same terminal growth of host plants that iguanas typically eat (see Factor E). Predators and parasitoids have been suggested as potential contributors to the butterfly's decline (M. Minno, pers. comm. 2010), but this has not been observed or confirmed in the field (Trager 2009, p. 149; Minno and Minno 2009, p. 78; FWC 2010, pp. 13, 24).

The extent to which native or exotic ants and other predators and parasitoids may pose a threat to the Miami blue is not clear, but deserves further attention. For example, invasive fire ants (*Solenopsis invicta*) were first confirmed in counties within the historical range of the Miami blue as early as 1958 (Hillsborough); presence was confirmed in additional counties in the late 1960s (Brevard and Volusia) and 1970s (Broward, Collier, Miami-Dade, Lee, Monroe) (Callcott and Collins 1996, p. 249); infestation has since expanded. In addition to the possible direct effects of predation, fire ants can also disrupt arthropod communities and displace native ants. In one study, Porter and Savignano (1990, pp. 2095–2106) found that *S. invicta* reduced species richness by 70 percent and abundance of native ants by 90 percent.

Both the red imported fire ant and the little fire ant (*Wasmannia auropunctata*), another invasive exotic ant, currently occur at BHSP (Saarinen and Daniels 2006, p. 71). Fire ants have also been found on all beaches within KWNWR (Wilmers *et al.* 1996, pp. 341–343; Wilmers 2011, pp. 20–21; T. Wilmers, pers. comm. 2012a). In one study in Key Largo, fire ants were found within half of the study transects and in close proximity to the edge of hardwood hammock habitat (Forys *et al.* 2001, p. 257). Forys *et al.* (2001, p. 257) found all immature swallowtail life stages to be vulnerable to predation by imported fire ants and recognized the potential impact of this predatory insect on the federally endangered Schaus swallowtail and other butterflies in south Florida. Thus, immature life stages of the Miami blue may be vulnerable to predation by fire ants within its current known locations or if the butterfly still persists, elsewhere in its historical range.

In a greenhouse situation, Trager (2009, p. 151) observed fire ants removing Miami blue eggs in an indoor flight cage, but noted that the ants did not attack larvae on the same plant. In his studies, a captive colony of fire ants was found to consume captive-reared Miami blue pupae in food trays; however, the ants did not remove newly laid eggs from the host plant and even exhibited weak tending behavior toward larvae (Trager 2009, pp. 151–152). At this time, it is unclear to what extent native and exotic predatory insects may be impacting wild Miami blue populations.

Some ant species may also protect Miami blue larvae against parasitoids and predators; however, this has not yet been observed in the wild (Trager and Daniels 2009, 479; Trager 2009, p. 101). In laboratory studies, *Camponotus floridanus* ants have been shown to display strong defensive behaviors (*e.g.,* rapidly circling larvae, recruiting nearby workers, and lunging at forceps) when disturbed (Trager and Daniels 2009, p. 480; Trager 2009, p. 102). The large size of this ant species and nearly constant tending may serve as a visual deterrent to potential attackers; however, researchers acknowledged that they have no definitive evidence that *C. floridanus* are more effective defenders of Miami blue larvae than small-bodied ant species (Trager and Daniels 2009, p. 480; Trager 2009, p. 97).

Researchers have suggested that some ant species may depredate Miami blue larvae or may opportunistically tend larvae without providing protection against predators or other benefits (Saarinen and Daniels 2006, p. 73; Saarinen 2009, pp. 134, 138). However, Trager and Daniels (2009, pp. 478–481) recorded a universal tending response among ants consistent with a mutualistic interaction through both field observations and laboratory trials. They did not observe any depredation of larvae by ants in the field and, based upon observations, doubted that many ant species regularly depredate larvae (Trager and Daniels 2009, pp. 479–481; Trager 2009, p. 149).

Summary of Factor C

Studies suggest that various stressors (*e.g.,* baculovirus, fire ants) have the potential to negatively impact the Miami blue, but there is no information on their impacts to wild populations. The Miami blue may have some mechanisms to potentially deter predators and parasitoids, but these are not well understood. The role of predation and parasitism needs to be more closely examined. Disease and predation have the potential to impact the Miami blue's continued survival, given its few remaining populations, low abundance, and restricted range. However, we do not have information to suggest that disease and predation are threats to the Miami blue at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Despite the fact that they contain several protections for the Miami blue, Federal, State, and local laws have not been sufficient to prevent past and ongoing impacts to the Miami blue and its habitat within its current and historical range.

In response to a petition from the NABA in 2002, the FWC emergency-listed the Miami blue butterfly in 2002, temporarily protecting the butterfly. On November 19, 2003, the FWC declared the Miami blue butterfly endangered (68A–27.003), making its protection permanent. On November 8, 2010, the FWC adopted a revised listing classification system, moving from a multi-tiered to single-category system. As a consequence of this change, the Miami blue butterfly (along with other species) became State-threatened; its original protective measures remained in place (68A–27.003, amended). This designation prohibits any person from taking, harming, harassing, possessing, selling, or transporting any Miami blue or parts thereof or eggs, larvae or pupae, except as authorized by permit from the executive director, with permits issued based upon whether issuance would further management plan goals and objectives. Although these provisions prohibit take of individuals, there is a general lack of law enforcement presence in many areas. In addition, existing regulations prohibit take, but do not provide substantive protection of Miami blue habitat or protection of potentially suitable habitat. Therefore, while the Miami blue butterfly is afforded some protection by its presence

on Federal (and State) lands, losses of suitable and potential habitat outside of these areas are expected to continue (see Factor A).

The Miami blue's presence on Federal (and State) lands offers some insulation against collection, but protection is somewhat limited (see Factor B). Permits are necessary for authorized collection, but law enforcement presence on Federal and State land is often inadequate. In addition, many areas are difficult to patrol and the State's protection of the Miami blue does not extend to butterflies that are similar in appearance (see *Similarity of Appearance* below). Because there are only slight morphological differences between the Miami blue and other butterfly species in the same areas, the Miami blue remains at risk to illegal collection, despite the regulatory mechanisms already in place (see Factor B).

As a Federal candidate subspecies, the Miami blue was afforded some protection through sections 7 and 10 of the Act and associated policies and guidelines, but protection was limited. Federal action agencies are to consider the potential effects to the butterfly and its habitat during the consultation process. Applicants and action agencies are encouraged to consider candidate species when seeking incidental take for other listed species and when developing habitat conservation plans. On Federal lands, such as KWNWR, candidate species are treated as ''proposed threatened.''

Although the Miami blue occurs on Federal (and possibly State) land that offers protection, these areas are vast and often heavily used. Signage prohibiting collection is sometimes lacking or may not be advisable as it could draw attention to the presence of the subspecies; patrolling and monitoring of activities can be limited and dependent upon the availability of staffing and resources. Within KWNWR, the Marquesas Keys are open to the public; portions of the beach on Boca Grande are closed (T. Wilmers, pers. comm. 2011b). In general, occupied islands are remote and difficult to patrol, and trespassing and unauthorized uses (*e.g.,* fire and fire pits) still occur (see Factor E). Therefore, the potential for illegal collection and damage to sensitive habitats still exists (see Factors B and E).

Prior to its apparent extirpation, the metapopulation at BHSP was afforded some protection by its presence on State lands. All property and resources owned by FDEP are generally protected from harm in Chapter 62D–2.013(2), and animals are specifically protected from unauthorized collection in Chapter 62D–2.013(5) of the Florida Statutes. Exceptions are made for collecting permits, which are issued, ''for scientific or educational purposes.'' Still, protection of resources at BHSP is a challenge due to the park's popularity and high use (See Factor E). Although in 2010, the FDEP hired a temporary, full-time biologist to work on Miami blue conservation issues at BHSP, including patrol of sensitive habitats, this position has since been reduced to part-time.

Permits are required from the FWC for scientific research on and collection of the Miami blue. For work on Federal lands (*i.e.,* KWNWR, ENP, and BNP), permits are required from the Service or the NPS. For work on State lands, permits are required from FDEP. Permits are also required for work on County-owned lands.

Summary of Factor D

Despite existing regulatory mechanisms, the Miami blue continues to decline due to the effects of a wide array of threats (see Factors A, B, and E). Based on our analysis of the best available information, we find that existing regulatory measures, due to a variety of constraints, do not work as designed, and, therefore, the existing regulatory mechanisms are inadequate to address threats to the subspecies throughout all of its range. We have no information to indicate that the aforementioned regulations, which currently do not offer adequate protection to the Miami blue, will be revised such that they would be adequate to provide protection for the subspecies in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Impacts From Iguanas

The exotic green iguana (*Iguana iguana*) appears to be a severe threat to the Miami blue (75 FR 69258; Daniels 2009, p. 5; FWC 2010, pp. 6, 13; Olle 2010, pp. 4, 14). Iguanas are prevalent within the Keys, and sightings within occupied and potential Miami blue habitat are common (P. Cannon, pers. comm. 2009, 2010d, 2010e). Effects of iguana herbivory to the host plant (nickerbean) at BHSP were evident by late 2008 and early 2009 (Emmel and Daniels 2009, p. 4; Daniels 2009, p. 5; P. Hughes, pers. comm. 2009; P. Cannon, pers. comm. 2009; A. Edwards, pers. comm. 2009). In January 2009, Cannon (pers. comm. 2009) reported that iguanas had stripped all new nickerbean growth, causing substantial losses since November 2008. In April 2009, nickerbean showed signs of limited growth due to chronic herbivory (P. Hughes, pers. comm. 2009).

In addition to damage, iguanas likely consume eggs and pupae when opportunistically feeding (P. Hughes, pers. comm. 2009; Daniels 2009, p. 5; FWC 2010, p. 13), especially since the butterfly uses the same terminal growth of host plants to lay eggs. For many years, host plant abundance within BHSP appeared capable of sustaining both iguanas and Miami blues. Depressed numbers of Miami blues in 2008, however, were likely the result of both a severe drought and impacts to the nickerbean from iguanas feeding on the terminal nickerbean growth (FWC 2010, p. 6). During the winter of 2010, prolonged and unseasonably cold temperatures in the lower Keys resulted in a considerable decline in available nickerbean at BHSP (Olle 2010, p. 14). The suppressed Miami blue population at this site during this time may not have been able to survive this temporary, but severe, reduction in nickerbean, likely caused by the combined influences of iguanas and environmental factors (*e.g.,* drought and cold).

Iguana tracks have been found on islands occupied by the Miami blue in KWNWR (Cannon *et al.* 2007, p. 16; T. Wilmers, pers. comm. 2011c) as well as on three islands in GWHNWR (T. Wilmers, pers. comm. 2011b). Three large, gravid female iguanas were trapped and removed from the Marquesas in February 2011 (T. Wilmers, pers. comm. 2011d). To date, the presence of iguanas (burrows or tracks) has been documented on each of the islands known to harbor Miami blues (T. Wilmers, *in litt.* 2011e). Cannon *et al.* (2007, p. 16) stated that the exotic herbivore has the potential to impact host and nectar plants. Iguana populations in south Florida, after long periods of slow growth, have been shown to irrupt (increase suddenly or rapidly in numbers) (Meshaka *et al.* 2004, pp. 157–158; Meshaka 2011, p. 52). Given the absence of predators within KWNWR, the iguana population may grow unchecked until limited by food sources or other natural factors (*e.g.,* hurricanes). A further concern is that severe damage to vegetation, as occurred during Hurricane Wilma (Cannon *et al.* 2010, p. 851), may concentrate Miami blues and iguanas in remnant stands of blackbead, thereby magnifying the iguana's impact on the butterfly and its habitat (T. Wilmers, *in litt.* 2011e).

Resource agencies are working to better understand and combat the threat of green iguanas in areas occupied (and

recently occupied) by the Miami blue. At BHSP, cooperative efforts resulted in the trapping and removal of 200 iguanas between November 2009 and October 2011 (Emmel and Daniels 2009, p. 4; FWC 2010, p. 17; E. Kiefer, pers. comm. 2011a, 2011b; E. Cowan, FPS, pers. comm. 2011). Removal efforts have significantly decreased the number of iguanas within BHSP; these management actions will need to be an ongoing effort due to the prevalence of iguanas in the surrounding areas (R. Zambrano, pers. comm. 2009; E. Cowan, pers. comm. 2011). Efforts are also underway to assess and address this threat at KWNWR, but it is unclear if iguanas regularly consume blackbead at the Refuge (T. Wilmers, pers. comm. 2011a, 2011c, 2011d, 2011f). Despite cooperative efforts, the threat from iguanas is expected to continue due to their widespread distribution and the difficulties in control.

Competition

Host resource competition from other butterfly species could deleteriously impact metapopulation productivity of the Miami blue. The introduction of or future island colonization by potential Lepidopteran competitors may impact the Miami blue metapopulation. The nickerbean blue, cassius blue, and Martial's scrub hairstreak are known to use various species of nickerbean host plants throughout their range (Glassberg *et al.* 2000, pp. 74–80; Calhoun *et al.* 2002, p. 15). The nickerbean blue and Martial's scrub hairstreak have been documented using gray nickerbean as a host plant at BHSP (Daniels *et al.* 2005, p. 174; P. Cannon, pers. comm. 2010g). Such host use may represent direct competition for host resources (Emmel and Daniels 2004, p. 14). However, Calhoun *et al.* (2002, p. 18) believed it was unlikely that competition played a significant role in the decline of the Miami blue based on the abundance of host plant sources available to lycaenids throughout the Lower Keys. There is no evidence to suggest that host resource competition is a threat to the Miami blue at this time or is likely to become so in the future.

Inadvertent and Purposeful Impacts From Humans

Inadvertent damage from humans can affect the Miami blue and its habitat in its current and former range. For example, the seed pods of balloonvine ''pop'' when squeezed and can be targeted by humans. Damage to balloonvine has been documented along roads in the Keys (J. Loye, University of California-Davis, pers. comm. 2003a, 2003b). During a study in the mid-1980s examining balloonvine and its associated insect community, Loye (pers. comm. 2003a) found a difference in insect diversity between sites along roads and those without road access. Acknowledging other possible contributing factors (*e.g.,* mosquito control, car emissions), Loye (pers. comm. 2003a) indicated that collectors and maintenance crews damaged balloons near roads, stating that ''humans damaged every balloon that could be easily found at our study sites'' (J. Loye, pers. comm. 2003b). It is not clear what, if any, impact this had on the butterfly at or since that time. However, damage to host plants (whole or parts) could contribute to mortality of eggs or larvae.

BHSP is heavily used by the public for recreational purposes, and although the butterfly has not been seen at this location since early 2010, suitable habitat is located along trails and other high-use areas (*e.g.,* campgrounds). Former colonies may have experienced disturbance from Park visitors. Trampling of host plants and well-worn footpaths were evident, at least periodically from 2002 to 2010, and during times when other stressors (*e.g.,* cold, drought, iguanas) occurred (P. Halupa, pers. obs. 2002; D. Olle, pers. comm. 2010; M. Salvato, pers. comm. 2010a; R. Zambrano, pers. comm. 2010). To protect larval host plants and adult nectar sources, the FPS erected fencing and signage around the majority of the south colony site at BHSP. Although this is expected to minimize damage to the largest habitat patch, other small habitat patches (as small as 15.0 by 15.0 feet [4.6 by 4.6 meters]) elsewhere on the island are still vulnerable to intentional or accidental damage. Fencing small colony sites or patches of available habitat is impractical and would make exact locations of colonies more evident, possibly increasing the risk of illegal collection or harm should the Miami blue return to the island.

KWNWR lacks human developments, but local disturbances result from illicit camping, fire pits, smugglers, vandals, and immigrant landings. These disturbances are generally infrequent for most islands within KWNWR with the exception of Boca Grande, which contains the largest amounts of beach. Recreational visitation is high on Boca Grande, particularly during weekends (Cannon *et al.* 2010, p. 852). Trampling of dune vegetation has been a long-term problem on Boca Grande, and fire pits have been found many times over the past two decades on both Boca Grande and the Marquesas Keys (Cannon *et al.* 2010, p. 852). Most recently, a fire pit was found adjacent to host plants within occupied habitat on Boca Grande in December 2011 (P. Cannon, pers. comm. 2012). The large amount of dead vegetation intermingled with host plants on Boca Grande and the Marquesas Keys makes the threat of fire (natural or human-induced), a significant threat to the Miami blue (Cannon *et al.* 2007, p. 13; 2010, p. 852; P. Cannon, pers. comm. 2012; T. Wilmers, pers. comm. 2012b). Immature stages (eggs, larvae), which are sedentary, would be particularly vulnerable. Glassberg and Olle (2010, p. 1) asserted that ''the proximity of the islands within KWNWR, to both Key West and the Dry Tortugas, invite human mischief, and largely go unpoliced.'' These areas within KWNWR are remote and accessible mainly by boat, making them difficult to patrol and monitor.

Other patches of potential and suitable habitat are susceptible to purposeful impacts from humans. Some private property owners in the Keys have reportedly threatened to clear vegetation from undeveloped properties to avoid any restrictions regarding the butterfly (M. Minno, *in litt.* 2011b; N. Pakhomoff-Spencer, consultant, pers. comm. 2011).

In summary, inadvertent and purposeful impacts from humans may have affected the Miami blue and its habitat. Due to the location of occupied and suitable habitat, the popularity of these areas with humans, and the projected human growth, especially in coastal areas, such impacts from recreation and other uses are expected to continue.

Other Natural and Unnatural Changes to Habitat

Natural changes to vegetation from environmental factors, succession, or other causes may now be a threat to the Miami blue because of its severely reduced range, few populations, and limited dispersal capabilities. Suitable and occupied habitat in KWNWR and other coastal areas is dynamic and fluctuating, influenced by a variety of environmental factors (*e.g.,* storm surge, wind, precipitation). In 2010, substantial changes in habitat conditions on Boca Grande occurred with the proliferation of *Galactia striata,* a native climbing vine (T. Wilmers, pers. comm. 2010a; P. Cannon, pers. comm. 2010b, 2010h, 2010i, 2010j). The vine has enveloped a substantial amount of blackbead, occurring on about 40 percent of the blackbead growing on the seaward side at the dune interface (T. Wilmers, pers. comm. 2010a). Wilmers (pers. comm. 2010a) indicated that the extensive growth was likely fueled by the markedly higher

precipitation during September and October 2010 (3.47 and 2.22 inches [8.81 and 5.64 cm], respectively, above normal in Key West). Under favorable conditions, the vine first grows in the dune, then sprawls landward laterally, eventually ascending and blanketing blackbead (T. Wilmers, pers. comm. 2010a). While climbing vines can proliferate before eventually dying back, Wilmers (pers. comm. 2010a) stated that the intense proliferation in 2010 was unprecedented in his 25 years of work in the area. Left unchecked, this proliferation has the potential to impact host plants and affect the butterfly's ability to persist on some islands.

Invasive and Exotic Vegetation

Displacement of native plants including host plants by invasive exotic species, a common problem throughout south Florida, also possibly contributed to habitat loss of the Miami blue. In coastal areas where undeveloped land remains, the Miami blue's larval food plants are likely to be displaced by invasive exotic plants, such as Brazilian pepper, Australian pine (*Casuarina equesitifolia*), Asian nakedwood (*Colubrina asiatica*), cat-claw vine (*Macfadyena ungius-cati*), wedelia (*Spahneticola trilobata*), largeleaf lantana (*Lantana camara*), Portia tree (*Thespesia populnea*), wild indigo (*Indigofera spicata*), beach naupaka (*Scaevola taccada*), and several species of invasive grasses. Although we do not have direct evidence of exotic species displacing host plants or nectar sources, we recognize this as a potential threat, due to the magnitude of this problem in south Florida.

Pesticides

Efforts to control salt marsh mosquitoes, *Aedes taeniorhynchus,* among others, have increased as human activity and population have increased in south Florida. To control mosquito populations, second-generation organophosphate (naled) and pyrethroid (permethrin) adulticides are applied by mosquito control districts throughout south Florida. In a rare case in upper Key Largo, another organophosphate (malathion) was applied in 2011 when the number of permethrin applications reached its annual limit. All three of these compounds have been characterized as being highly toxic to nontarget insects by the U.S. Environmental Protection Agency (2002, p. 32; 2006a, p. 58; 2006b, p. 44). The use of such pesticides (applied using both aerial and ground-based methods) to control mosquitoes presents a potential risk to nontarget species, including the Miami blue butterfly.

The potential for mosquito control chemicals to drift into nontarget areas and persist for varying periods of time has been well documented. Hennessey and Habeck (1989, pp. 1–22; 1991, pp. 1–68) and Hennessey *et al.* (1992, pp. 715–721) illustrated the presence of mosquito spray residues long after application in habitat of the Schaus swallowtail and other imperiled species in both the upper (Crocodile Lake NWR, North Key Largo) and lower Keys (NKDR). Residues of aerially applied naled were found 6 hours after application in a pineland area that was 820 yards (750 meters) from the target area; residues of fenthion (an adulticide no longer used in the Keys) applied via truck were found up to 55 yards (50 meters) downwind in a hammock area 15 minutes after application in adjacent target areas (Hennessey *et al.* 1992, pp. 715–721).

More recently, Pierce (2009, pp. 1–17) monitored naled and permethrin deposition following application in and around NKDR from 2007 to 2009. Permethrin, applied by truck, was found to drift considerable distances from target areas with residues that persisted for weeks. Naled, applied by plane, was also found to drift into nontarget areas but was much less persistent, exhibiting a half-life of approximately 6 hours. To expand this work, Pierce (2011, pp. 6–11) conducted an additional deposition study in 2010 focusing on permethrin drift from truck spraying and again documented measurable amounts of permethrin in nontarget areas. In 2009, Tim Bargar (pers. comm. 2011) conducted two field trials on NKDR that detected significant naled residues at locations within nontarget areas on the Refuge that were up to 440 yards (402 meters) from the edge of zones targeted for aerial applications.

In addition to mosquito control chemicals entering nontarget areas, the toxic effects of mosquito control chemicals to nontarget organisms have also been documented. Lethal effects on nontarget Lepidoptera have been attributed to fenthion and naled in both south Florida and the Keys (Emmel 1991, pp. 12–13; Eliazar and Emmel 1991, pp. 18–19; Eliazar 1992, pp. 29–30). In the lower Keys, Salvato (2001, pp. 8–14) suggested that declines in populations of the Florida leafwing (now a Federal candidate) were also partly attributable to mosquito control chemical applications. Salvato (2001, p. 14; 2002, pp. 56–57) found populations of the Florida leafwing (on Big Pine Key within NKDR) to increase during drier years when adulticide applications over the pinelands decreased, although Bartram's hairstreak did not follow this pattern. It is important to note that vulnerability to chemical exposure may vary widely between species, and current application regimes do not appear to affect some species as strongly as others (Calhoun *et al.* 2002, p. 18; Breidenbaugh and De Szalay 2010, pp. 594–595; Rand and Hoang 2010, pp. 14–17, 20; Hoang *et al.* 2011, pp. 997–1005).

Dose-dependent decreases in brain cholinesterase activity in great southern white butterflies *(Ascia monuste)* exposed to naled have been measured in the laboratory (T. Bargar, pers. comm. 2011). An inhibition of cholinesterase, which is the primary mode of action of naled, prevents an important neurotransmitter, acetylcholine, from being metabolized, causing uncontrolled nerve impulses that may result in erratic behavior and, if severe enough, mortality. From these data, it was determined that significant mortality was associated with cholinesterase activity depression of at least 27 percent (T. Bargar, pers. comm. 2011). In a subsequent field study on NKDR, adult great southern white and Gulf fritillary (*Agraulis vanillae*) butterflies were placed in field enclosures at both target and nontarget areas during aerial naled application. The critical level of cholinesterase inhibition (27 percent) was exceeded in the majority of butterflies from the target areas, as well as in a large proportion of butterflies from the nontarget areas (T. Bargar, pers. comm. 2011). During the same field experiment, great southern white and Gulf fritillary larvae were also exposed in the field during aerial naled application and exhibited mortality at both target and nontarget sites (T. Bargar, pers. comm. 2011).

In a laboratory study, Rand and Hoang (2010, pp. 1–33) and Hoang *et al.* (2011, pp. 997–1005) examined the effects of exposure to naled, permethrin, and dichlorvos (a breakdown product of naled) on both adults and larvae of five Florida native butterfly species (common buckeye (*Junonia coenia*), painted lady (*Vanessa cardui*), zebra longwing (*Heliconius charitonius*), atala hairstreak (*Eumaeus atala*), and white peacock (*Anartia jatrophae*). The results of this study indicated that, in general, larvae were slightly more sensitive to each chemical than adults, but the differences were not significant. Permethrin was generally the most toxic chemical to both larvae and adults, although the sensitivity between species varied.

The laboratory toxicity data generated by this study were used to calculate hazard quotients (concentrations in the environment/concentrations causing an

adverse effect) to assess the risk that concentrations of naled and permethrin found in the field pose to butterflies. A hazard quotient that exceeds one indicates that the environmental concentration is greater than the concentration known to cause an adverse effect (mortality in this case), thus indicating significant risk to the organism. Environmental exposures for naled and permethrin were taken from Zhong *et al.* (2010, pp. 1961–1972) and Pierce (2009, pp. 1–17), respectively, and represent the highest concentrations of each chemical that were quantified during field studies in the Keys. When using the lowest median lethal concentrations from the laboratory study, the hazard quotients for permethrin were greater than one for each adult butterfly, indicating a significant risk of toxicity to each species. In the case of naled, significant risk to the zebra longwing was predicted based on its hazard quotient exceeding one.

In a recent study, Bargar (2012, pp. 1–7) conducted a probabilistic risk assessment for adult butterflies using published acute toxicity data in combination with deposition values for naled that were quantified at eight locations within NKDR. The published toxicity data were used in conjunction with morphometric data (total surface area and weight) for 22 butterfly species and the NKDR naled deposition values to estimate the probability that field exposure to naled will exceed butterfly effect estimates (quantity of naled per unit body weight associated with mortality in adult butterflies). From the field deposition measurements, the probability that the effect estimate for 50 percent of the examined butterfly species will be exceeded ranged from 70 (lowest butterfly surface area to weight ratio) to 95 percent (highest surface area to weight ratio) based on filter paper deposition results and 33 to 87 percent based on yarn sampler results. As the surface area to weight ratio increases, the probability that a greater quantity of naled per unit body weight will be delivered increases. These results suggest that significant impacts on butterfly survival may result from aerial naled application.

From 2006 to 2008, Zhong *et al.* (2010, pp. 1961–1972) investigated the impact of single aerial applications of naled on Miami blue larvae in the field. The study was conducted in North Key Largo in cooperation with the Florida Keys Mosquito Control District (FKMCD) and used experimentally placed Miami blue larvae that were reared in captivity. The study involved 15 test stations: 9 stations in the target zone, 3 stations considered to be susceptible to drift (2 stations directly adjacent to the spray zone and 1 station 12 mi (19.3 km) southwest of the spray zone), and 3 field reference stations (25 mi (40.2 km) southwest of the spray zone). Survival of butterfly larvae in the target zone was 73.9 percent, which was significantly lower than both the drift zone (90.6 percent) and the reference zone (100 percent), indicating that direct exposure to naled poses significant risk to Miami blue larvae. In addition to observing elevated concentrations of naled at test stations in the target zone, 9 of 18 samples in the drift zone also exhibited detectable concentrations, once again exhibiting the potential for mosquito control chemicals to drift into nontarget areas.

Based on these studies, it can be concluded that mosquito control activities that involve the use of both aerial and ground-based spraying methods have the potential to deliver pesticides in quantities sufficient to cause adverse effects to nontarget species in both target and nontarget areas. It should be noted that many of the studies referenced above dealt with single application scenarios and examined effects on only one to two butterfly life stages. Under a realistic scenario, the potential exists for exposure to all life stages to occur over multiple applications in a season. In the case of a persistent compound like permethrin where residues remain on vegetation for weeks, the potential exists for nontarget species to be exposed to multiple pesticides within a season (*e.g.,* permethrin on vegetation coupled with aerial exposure to naled).

Aspects of the Miami blue's natural history may increase its potential to be exposed to and affected by mosquito control pesticides and other chemicals. For example, host plants and nectar sources are commonly found at disturbed sites and often occur along roads in developed areas, where chemicals are applied. Ants associated with the Miami blue (see Interspecific relationships) may be affected in unknown ways. Host plant and nectar source availability may also be indirectly affected through impacts on pollinators. Carroll and Loye (2006, pp. 19, 24) and others (Emmel 1991, p. 13; Glassberg and Salvato 2000, p. 7; Calhoun *et al.* 2002, p. 18) suggested that the Miami blue butterfly may be more susceptible to pesticides than perhaps other lycaenids (*e.g.,* the silver-banded hairstreak) because Miami blue larvae leave entrance holes open in seed pods to allow access for attending ants. Ants and larvae of the Miami blue on balloonvine were found to die when roadside spraying for mosquito control began in late spring, but larvae of the silver-banded hairstreak (also on balloonvine), who do not leave entrance holes in seed pods, apparently survived subsequent spraying (Emmel 1991, p. 13). However, Minno (pers. comm. 2010) argued that larvae using balloonvine pods would be protected from the effects of pesticides because the pods have internal partitions and exposure would be limited due to the size of the entrance hole.

No mosquito control pesticides are used within KWNWR. At BHSP, the only application of adulticides (permethrin) is occasional truck-based spraying in the ranger residence areas (E. Kiefer, pers. comm. 2011a). Mosquito control practices currently pose no risk to the Miami blue within KWNWR. However, mosquito control activities, including the use of larvicides and adulticides, are being implemented within suitable and potential habitat for the Miami blue elsewhere in its range (Carroll and Loye 2006, pp. 14–15). The findings of Zhong *et al.* (2010, pp. 1961–1972) and Pierce (2009, pp. 1–17) along with other studies suggest that aerial or truck-based applications of mosquito control chemicals may pose a threat to the Miami blue, if the butterfly exists in other, unknown locations. Additionally, mosquito control practices potentially may limit expansion of undocumented populations or colonization of new areas. If the Miami blue colonizes new areas or if additional populations are discovered or reintroduced, adjustments in mosquito control (and other) practices may be needed to help safeguard the subspecies.

Efforts are already underway by multiple agencies and partners to seek ways to avoid and minimize impacts to the Miami blue and other imperiled nontarget species. For example, in an effort to reduce the need for aerial adulticide spraying, the FKMCD is increasing larviciding activities, which are believed to have less of an ecological impact on wilderness islands near NKDR and GWHNWR (FKMCD 2009, pp. 3–4). This effort has led to a reduction in area receiving adulticide treatment on Big Pine Key, No Name Key, and Torch Key (FKMCD 2009, p. 17). Another example is the Florida Coordinating Council on Mosquito Control (FCCMC), including the Imperiled Species Subcommittee, which was initially formed to resolve the conflict between mosquito control spraying and the reintroduction of Miami blues to their historical range (FWC 2010, p. 9).

The FWC's management plan for the Miami blue also recommended the use

of no-spray zones for all pesticides and use of buffers at or around Miami blue populations and other conservation measures (FWC 2010, pp. ii–41). However, there are no specific binding or mandatory restrictions to prohibit such practices or encourage other beneficial measures. The FWC plan suggested that an aerial no-spray buffer zone of 820 yards (750 meters) be established around Miami blue populations, where possible, and that buffer zones for truck-based applications of adulticides also be established (FWC 2010, p. 17). The FCCMC also recommended that the appropriate width of buffer zones be determined by future research. The Service is supporting research to characterize drift from truck-based spraying methods. The data from this study will aid in better determining appropriate buffer distances around sensitive areas.

In summary, although substantial progress has been made in reducing impacts, the potential effects of mosquito control applications and drift residues remain a threat to the Miami blue. We will continue to work with the mosquito control districts and other partners and stakeholders to reduce threats wherever possible.

Effects of Small Population Size and Isolation

The Miami blue is vulnerable to extinction due to its severely reduced range, small population size, metapopulation structure, few remaining populations, and relative isolation. In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in low diversity, which may impact viability and fecundity (Chesser 1983, pp. 66–77). Extinction risk can increase significantly with decreasing heterozygosity as was reported for the Glanville fritillary (Saccheri *et al.* 1998, pp. 491–494). Distance between metapopulations and colonies within those metapopulations and the small size of highly sporadic populations can make recolonization unlikely if populations are extirpated. Fragmentation of habitat and aspects of a butterfly's natural history (*e.g.,* limited dispersal, reliance on host plants) can contribute to and exacerbate threats.

Estimated abundance of the Miami blue is not known, but may number in the hundreds, and at times, possibly higher. Although highly dependent on individual species considered, a population of 1,000 has been suggested as marginally viable for an insect (D. Schweitzer, TNC, pers. comm. 2003). Schweitzer (pers. comm. 2003) has also suggested that butterfly populations of less than 200 adults per generation would have difficulty surviving over the long term. In comparison, in a review of 27 recovery plans for listed insect species, Schultz and Hammond (2003, p. 1377) found that 25 plans broadly specified metapopulation features in terms of requiring that recovery include multiple population areas (the average number of sites required was 8.2). The three plans that quantified minimum population sizes as part of their recovery criteria for butterflies ranged from 200 adults per site (Oregon silverspot [*Speyeria zerene hippolyta*]) to 100,000 adults (Bay checkerspot [*Euphydryas editha bayensis*]) (Schulz and Hammond 2003, pp. 1374–1375).

Schultz and Hammond (2003, pp. 1372–1385) used population viability analyses to develop quantitative recovery criteria for insects whose population sizes can be estimated and applied this framework in the context of the Fender's blue (*Icaricia icarioides fenderi*), a butterfly listed as endangered in 2000 due to its small population size and limited remaining habitat. They found the Fender's blue to be at high risk of extinction at most of its sites throughout its range despite that fact that the average population at 12 sites examined ranged from 5 to 738 (Schulz and Hammond 2003, pp. 1377, 1379). Of the three sites with populations greater than a few hundred butterflies, only one of these had a reasonably high probability of surviving the next 100 years (Schulz and Hammond 2003, p. 1379). Although the conservation needs and biology of the Miami blue and Fender's blue are undoubtedly different, the two lycaenids share characteristics: Both have limited dispersal, and most remaining habitat patches are completely isolated.

Losses in diversity within historical and current populations of the Miami blue butterfly have already occurred. Historical populations were genetically more diverse than two contemporary populations (BHSP and KWNWR) (Saarinen 2009, p. 48). Yet together, between the two contemporary populations, the Miami blue had retained a significant amount of genetic diversity from its historical values (Saarinen 2009, p. 51). Despite likely fluctuations in population size, the BHSP population had retained an adequate amount of genetic diversity to maintain the population (Saarinen 2009, p. 77). Overall, patterns of genetic diversity in the BHSP population (mean overall observed heterozygosity of 39.5 percent) were similar to or slightly lower than other nonmigratory butterfly species studies utilizing microsatellite markers (Saarinen 2009, pp. 50, 74–75). Unfortunately, the BHSP population may now be lost. The extant KWNWR population is more genetically diverse (mean observed heterozygosity of 51 percent vs. 39.5 percent for BHSP) (Saarinen 2009, p. 75).

The Miami blue appears to have been impacted by relative isolation. No gene flow has occurred between contemporary populations (Saarinen *et al.* 2009a, p. 36). Saarinen (2009, p. 79) suggested that the separation was recent. While historical populations may have once linked the two contemporary populations, the recent absence of populations between KWNWR and BHSP appears to have broken the gene flow (Saarinen 2009, p. 79). Based upon modeling with a different butterfly species, Fleishman *et al.* (2002, pp. 706–716) argued that factors such as habitat quality may influence metapopulation dynamics, driving extinction and colonization processes, especially in systems that experience substantial natural and anthropogenic environmental variability (see *Environmental Stochasticity* below).

According to Saarinen *et al.* (2009a, p. 36), the severely reduced size of the existing populations suggests that genetic factors, along with environmental stochasticity, may already be affecting the persistence of the Miami blue. However, they also suggested that, in terms of extinction risk, a greater short-term problem for the two contemporary natural populations (BHSP and KWNWR) may be the lack of gene flow rather than the current effective population size (Saarinen *et al.* 2009a, p. 36). If only one or two metapopulations remain, it is absolutely critical that remaining genetic diversity and gene flow are retained. Conservation decisions to augment or reintroduce populations should not be made without careful consideration of habitat availability, genetic adaptability, the potential for the introduction of maladapted genotypes, and other factors (Frankham 2008, pp. 325–333; Saarinen *et al.* 2009a, p. 36).

Aspects of Its Natural History

Aspects of the Miami blue's natural history may increase the likelihood of extinction. Cushman and Murphy (1993, p. 40) argued that dispersal is essential for the persistence of isolated populations. Input of individuals from neighboring areas can bolster dwindling numbers and provide an influx of genetic diversity, increasing fitness and population viability. The tendency for

lycaenids to be comparatively sedentary should result in less frequent recolonization, less influx of individuals, and reduced gene flow between populations (Cushman and Murphy 1993, p. 40). In short, taxa with limited dispersal abilities may be far more susceptible to local extinction events than taxa with well-developed dispersal abilities (Cushman and Murphy 1993, p. 40).

Lycaenids with a strong dependence on ants may be more sensitive to environmental changes and, thus, more prone to endangerment and extinction than species not tended by ants (and non-lycaenids in general) (Cushman and Murphy 1993, pp. 37, 41). This hypothesis is based on the probability that the combination of both the right food plant and the presence of a particular ant species may occur relatively infrequently in the landscape. Selection may favor reduced dispersal by ant-associated lycaenids due to the difficulty associated with locating patches that contain the appropriate combination of food plants and ants (Cushman and Murphy 1993, pp. 39–40). Although significant research on the relationship between Miami blue larvae and ants has been conducted, this association is still not completely understood. Lycaenid traits (sedentary, host-specific, symbiotic with ants) that result in isolated populations of variable sizes may serve to limit genetic exchange (Cushman and Murphy 1993, pp. 37, 39–40). The Miami blue possesses several of these traits, all of which may increase susceptibility and contribute to imperilment.

Environmental Stochasticity

The climate of the Keys is driven by a combination of local, regional, and global events, regimes, and oscillations. There are three main ''seasons'': (1) The wet season, which is hot, rainy, and humid from June through October, (2) the official hurricane season that extends one month beyond the wet season (June 1 through November 30) with peak season being August and September, and (3) the dry season, which is drier and cooler from November through May. In the dry season, periodic surges of cool and dry continental air masses influence the weather with short-duration rain events followed by long periods of dry weather.

Environmental factors have likely impacted the Miami blue and its habitat within its historical range. A hard freeze in the late 1980s likely contributed to the Miami blue's decline (L. Koehn, pers. comm. 2002), presumably due to loss of larval host plants in south Florida. Prolonged cold temperatures in January 2010 and December 2010 through January 2011 may have also impacted the remaining metapopulations in the Keys. Unseasonably cold temperatures during winter 2010 (in combination with impacts from iguanas) resulted in a substantial loss of nickerbean and nectar sources at BHSP. This reduction, albeit temporary, may have severely impacted an already depressed Miami blue population on the island. Similarly, extended dry conditions and drought can affect the availability of host plants and nectar sources and affect butterfly populations (Emmel and Daniels 2004, pp. 13–14, 17). Depressed numbers of the Miami blue at BHSP in 2008 were attributed to severe drought (Emmel and Daniels 2009, p. 4).

The Keys are regularly threatened by tropical storms and hurricanes. No area of the Keys is more than 20 feet (6.1 meters) above sea level (and many areas are only a few feet (meters) in elevation). These tropical systems have affected the Miami blue and its habitat. Calhoun *et al.* (2002, p. 18) indicated that Hurricane Andrew in 1992 may have negatively impacted the majority of Miami blue populations in southern Florida. In 2005, four hurricanes (Katrina, Dennis, Rita, and Wilma) affected habitat at BHSP, resulting in reduced abundance of Miami blues following the storms that continued throughout 2006 (Salvato and Salvato 2007, p. 160) and beyond (Emmel and Daniels 2009, p. 4). A significant portion of the nickerbean and large stands of nectar plants at BHSP were temporarily damaged by the storms, including roughly 50 percent of the vegetation on the southern side of the island (Salvato and Salvato 2007, p. 157). Although the host plant quickly recovered following the storms (Salvato and Salvato 2007, p. 160), the Miami blue never fully recolonized several parts of the island (Emmel and Daniels 2009, p. 4).

Similarly, Hurricane Wilma heavily damaged blackbead across many islands within KWNWR (Cannon *et al.* 2010, p. 850). Although the hurricane severely damaged or killed much of the Miami blue host plant on KWNWR, it is also believed to have enhanced or created many new habitats across the islands by clearing older vegetation and opening patches for growth of host plant and nectar sources (Cannon *et al.* 2010, p. 852). Cannon *et al.* (2010, p. 852) suggested that the proximity and circular arrangement of these islands may provide some safeguard during mild or moderate storms. Given enough resiliency in extant populations, certain storm regimes may benefit populations over some timeframe if these events result in disturbances that favor host plants and other habitat components.

According to the Florida Climate Center, Florida is by far the most vulnerable State in the United States to hurricanes and tropical storms (*http://coaps.fsu.edu/climate_center/tropicalweather.shtml*). Based on data gathered from 1856 to 2008, Klotzbach and Gray (2009, p. 28) calculated the climatological and current-year probabilities for each State being impacted by a hurricane and major hurricane. Of the coastal States analyzed, Florida had the highest climatological probabilities, with a 51 percent probability of a hurricane and a 21 percent probability of a major hurricane over a 52-year time span. Florida had a 45 percent current-year probability of a hurricane and an 18 percent current-year probability of a major hurricane (Klotzbach and Gray 2009, p. 28). Given the Miami blue's low population size and few isolated occurrences, the subspecies is at substantial risk from hurricanes, storm surges, or other extreme weather. Depending on the location and intensity of a hurricane or other severe weather event, it is possible that the Miami blue could become extirpated or extinct. Because it appears to have limited dispersal capabilities, natural recolonization of potentially suitable sites is anticipated to be unlikely or exceedingly slow at best.

Other processes to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to rise from 2 °C to 5 °C (3.6 °F to 9 °F) for North America by the end of this century (IPCC 2007, pp. 7–9, 13). Based upon modeling, Atlantic hurricane and tropical storm frequencies are expected to decrease (Knutson *et al.* 2008, pp. 1–21). By 2100, there should be a 10–30 percent decrease in hurricane frequency with a 5–10 percent wind increase. This is due to more hurricane energy available for intense hurricanes. However, hurricane frequency is expected to drop due to more wind shear impeding initial hurricane development. In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4–7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact magnitude, direction, and distribution of all of these changes at the regional level are difficult to project.

Summary of Factor E

Based on our analysis of the best available information we have identified a wide array of natural and manmade factors affecting the continued existence of the Miami blue butterfly. Effects of small population size, isolation, and loss of genetic diversity are likely significant threats. Aspects of the Miami blue's natural history and environmental stochasticity may also contribute to its imperilment. Other natural (*e.g.,* impacts from iguanas, changes to habitat, invasive and exotic vegetation) and anthropogenic factors (*e.g.,* pesticides, habitat alteration, impacts from humans) are also identifiable threats. Collectively, these threats have operated in the past, are impacting the subspecies now, and will continue to impact the Miami blue in the future.

Determination of Status

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Miami blue butterfly. The only confirmed metapopulation of Miami blue is currently restricted to a few, small insular areas in the extreme southern portion of its historical range. The butterfly's range, which once extended from the Keys north along the Florida coasts to about St. Petersburg and Daytona, is now substantially reduced, with an estimated >99 percent decline in area occupied. Many factors likely contributed to the Miami blue's decline, and numerous major threats, acting individually or synergistically, continue today (see *Summary of Factors Affecting the Species*).

Habitat loss, degradation, and modification from human population growth and associated development and agriculture have impacted the Miami blue, curtailing its range (see Factor A). Environmental effects from climatic change, especially sea level rise, are expected to become severe in the future, resulting in additional habitat losses (see Factor A). Due to the few metapopulations, small population size, restricted range, and remoteness of occupied habitat, collection is a significant threat to the subspecies and could potentially occur at any time (see Factor B). Even limited collection from the remaining metapopulation could have deleterious effects on reproductive and genetic viability of the subspecies and could contribute to its extinction. Similarly, disease and predation (see Factor C) also have the potential to impact the Miami blue's continued survival, given its vulnerability (see Factor E).

The subspecies is currently also threatened by a wide array of natural and manmade factors (see Factor E). In addition to the effects of small population size, isolation, and loss of genetic diversity, aspects of the Miami blue's natural history and environmental stochasticity may contribute to its imperilment. Other natural (*e.g.,* impacts from iguanas, changes to habitat) and anthropogenic factors (*e.g.,* pesticides, impacts from humans) are also threats of varying magnitude. Finally, existing regulatory mechanisms (see Factor D), due to a variety of constraints, do not work as designed and do not provide adequate protection for the subspecies. Overall, impacts from increasing threats, operating singly or in combination, are likely to result in the extinction of the subspecies.

Section 3 of the Endangered Species Act defines an endangered species as ''* * * any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''* * * any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the immediate and ongoing significant threats to the Miami blue butterfly throughout its entire occupied range and the fact that the subspecies is restricted to only one or possibly two populations, we have determined that the subspecies is in danger of extinction throughout all of its range. Since threats extend throughout the entire range, it is unnecessary to determine if the Miami blue butterfly is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined that the Miami blue butterfly meets the definition of an endangered species under the Act. Consequently, we are listing the Miami blue butterfly as an endangered species throughout its entire range.

The survival of the Miami blue now depends on protecting the species' occupied and suitable habitat from further degradation and fragmentation, removing and reducing controllable threats, increasing the current population in size, reducing the threats of illegal collection, retaining the remaining genetic diversity; and establishing populations at additional locations. The survey and monitoring efforts and scientific studies conducted to date, when combined with other available historical information, indicate that the Miami blue butterfly is on the brink of extinction.

By listing the Miami blue butterfly as an endangered subspecies, the protections (through sections 7, 9, and 10 of the Act) and recognition that immediately became available to the subspecies upon emergency listing will continue and increase the likelihood that it can be saved from extinction and ultimately be recovered. In addition, recovery funds may become available, which could facilitate recovery actions (*e.g.,* funding for additional surveys, management needs, research, captive propagation and reintroduction, monitoring) (see *Available Conservation Measures,* below).

The Service acknowledges that it cannot fully address some of the natural threats facing the subspecies (*e.g.,* hurricanes, tropical storms) or even some of the other significant, long-term threats (*e.g.,* climatic changes, sea-level rise). However, through listing, we provide protection to the known population(s) and any new population of the subspecies that may be discovered (see section 9 of *Available Conservation Measures,* below). With listing, we can also influence Federal actions that may potentially impact the subspecies (see section 7 below); this is especially valuable if it is found at additional locations. With this action, we are also better able to deter illicit collection and trade.

Through this action, the Miami blue will continue receiving protection from collection, possession, and trade (through sections 9 and 10 of the Act). The three butterflies that are similar in appearance to the Miami blue will receive protection from collection in portions of their ranges (*i.e.,* portions that overlap with the Miami blue's historical range). At present, the three similar butterflies are not protected by the State of Florida. Extending the prohibitions of collection to the three similar butterflies in portions of their ranges provides greater protection to the Miami blue. Listing will partially alleviate some of the imminent threats that now pose a significant risk to the survival of the subspecies.

Critical Habitat and Prudency Determination

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas

outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine that a species is endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that both circumstances apply to the Miami blue butterfly. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by a critical habitat designation. An explanation of this ''balancing'' evaluation follows.

Benefits to the Subspecies From Critical Habitat Designation

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

All areas known to support the Miami blue butterfly since 1996 are or have been on Federal or State lands; these areas are currently being managed for the subspecies. Management efforts are consistent with, and geared toward, Miami blue conservation, and such efforts are expected to continue in the future. Because the butterfly exists only as one or possibly two small metapopulations, any future activity involving a Federal action that would destroy or adversely modify occupied critical habitat may also likely jeopardize the subspecies' continued existence (see *Jeopardy Standard,* below). Consultation with respect to critical habitat would provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of a critical habitat designation, areas that support the Miami blue butterfly will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate. Federal actions affecting the Miami blue butterfly, even in the absence of designated critical habitat areas, will still benefit from consultation pursuant to section 7(a)(2) of the Act and may still result in jeopardy findings. Therefore, designation of specific areas as critical habitat that are currently occupied or recently occupied would not likely provide a measurable incremental benefit to the subspecies.

Another potential benefit to the Miami blue butterfly from designating critical habitat is that it could serve to educate landowners, State and local government agencies, Refuge or Park visitors, and the general public regarding the potential conservation value of the area. Through the processes of listing the butterfly under the State of Florida's endangered species statute in 2002, the recognition of the Miami blue as a Federal candidate subspecies in 2005, and our proposed and emergency rules for the subspecies in August 2011, much of this educational component is already in effect. Agencies, organizations, and stakeholders are actively engaged in efforts to raise awareness for the butterfly and its conservation needs. For example, the NABA has a Miami blue chapter, which helps promote awareness for the subspecies. The FWC and partners have also formed a workgroup, in part to raise awareness for imperiled butterflies in south Florida. Staff at BHSP have recruited volunteers to help search for the subspecies within the Park and surrounding areas, and they have organized speakers to inform the general public about the butterfly. In addition, designation of critical habitat could inform State agencies and local governments about areas that could be conserved under State laws or local ordinances. However, since awareness and education involving the Miami blue is already well underway, designation of critical habitat would likely provide only minimal incremental educational benefits.

Increased Threat to the Subspecies by Designating Critical Habitat

Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat areas in the **Federal Register**. The degree of detail in those maps and boundary descriptions is greater than the general location descriptions provided in this rule listing the species as endangered. At present, maps depicting the locations of extant populations and habitat most likely to support the Miami blue do not exist. We are concerned that designation of critical habitat would more widely announce the exact location of the butterflies (and highly suitable habitat) to poachers, collectors, and vandals and further facilitate unauthorized collection and trade. Due to its extreme rarity (a low number of individuals, combined with small areas inhabited by the remaining metapopulation), this butterfly is highly vulnerable to collection. Vandalism, disturbance, and other harm from humans are also serious threats to the butterfly and its habitat (see Factors B and E above). At this time, removal of any individuals or damage to habitat may have devastating consequences for the survival of the subspecies. We estimate that these threats would be exacerbated by the publication of maps and descriptions outlining the specific locations of this critically imperiled butterfly in the **Federal Register** and local newspapers. Maps and descriptions of critical habitat, such as those that would appear in the **Federal Register** if critical habitat were designated, are not now available to the general public.

Although we do not have specific evidence of taking for this subspecies, illegal collection of imperiled butterflies from State, Federal, and other lands in Florida appears ongoing, prevalent, and damaging (see Factor B analysis above). In addition, we are aware that a market

exists for trade in rare, imperiled, and listed butterflies, including those in south Florida (see Factor B analysis above).

Additionally, we are aware of a market for butterflies that look similar to the Miami blue, including all three of the subspecies we are listing due to similarity of appearance (see above), as well as other *Cyclargus thomasi* subspecies that occur in foreign countries. It is clear that a demand currently exists for both imperiled butterflies and those similar in appearance to the Miami blue. Due to its few metapopulations, small population size, restricted range, and remoteness of occupied habitat, we find that collection is a significant threat to the Miami blue butterfly and could occur at any time. Even limited collection from the remaining population (or other populations, if discovered) could have deleterious effects on reproductive and genetic viability and thus could contribute to its extinction. Identification of critical habitat would increase the severity of this threat by depicting the exact locations where the subspecies may be found and more widely publicizing detailed information and maps, exposing the fragile population to greater risks.

Identification and publication of critical habitat may also increase the likelihood of inadvertent or purposeful habitat destruction. Damage to host plants from humans has been documented in the past (see Factor E above). Recreation within occupied areas has resulted in trampling of vegetation and negative impacts to the subspecies and its habitat (see Factor E above). High visitation and illicit uses (*e.g.,* fire pits, camping, vandalism) within occupied and suitable habitat have resulted in local disturbances, and the risk of fire (natural or human-induced) is now a significant threat (see Factor E above). In addition, some private property owners in the Keys have reportedly threatened to clear vegetation from undeveloped properties to avoid any restrictions regarding the butterfly (M. Minno, *in litt.* 2011b; N. Pakhomoff-Spencer, consultant, pers. comm. 2011). We recognize that landowner cooperation is key to the Miami blue's survival and recovery; however, this may be reduced with critical habitat designation. We estimate that identification and advertisement of critical habitat may exacerbate these threats, thus making sensitive areas more vulnerable to purposeful harmful impacts from humans. Immature stages (eggs, larvae), which are sedentary, are particularly vulnerable. Overall, identification and publication of detailed critical habitat information and maps would likely increase exposure of sensitive habitats and increase the likelihood and severity of threats to both the subspecies and its habitat.

Identification and publication of critical habitat may lead to increased attention to the subspecies, or increased attempts to illegally collect it, which could also lead to an increase in enforcement problems. Although take prohibitions exist, effective enforcement is difficult. As discussed in Factors B, D, and E and elsewhere above, the threat of collection and inadvertent impacts from humans exists; areas are already difficult to patrol. Areas within the KWNWR are remote and accessible mainly by boat, making them difficult for law enforcement personnel to patrol and monitor. Designation of critical habitat would facilitate further use and misuse of sensitive habitats and resources, creating additional difficulty for law enforcement personnel in an already challenging environment.

Overall, we find that designation of critical habitat will increase the likelihood and severity of the threats of illegal collection of the subspecies and destruction of sensitive habitat. With increased attention and activities, we also anticipate that designation will contribute to, and exacerbate enforcement issues and problems.

Increased Threat to the Subspecies Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would subject the subspecies to increased threats, while conferring little additional incremental benefit beyond that provided by listing. With designation, minor regulatory (*e.g.,* consulting on adverse modifications) and educational benefits may be realized. However, these benefits (beyond listing) will be more than offset by the increased threats to the subspecies and its habitat that could be associated with critical habitat designation.

Critical habitat involves the identification and publication of detailed descriptions and maps. Publication of such maps and information, otherwise not now available, exposes the Miami blue to an increased threat of collection. It also increases the potential for inadvertent or purposeful disturbance and vandalism to important and sensitive habitats and contributes to enforcement issues. Overall, we find that the risk of increasing significant threats to the subspecies by publishing location information in a critical habitat designation greatly outweighs the minimal regulatory and educational benefits of designating critical habitat.

In conclusion, we find that the designation of critical habitat is not prudent, in accordance with 50 CFR 424.12(a)(1), because the Miami blue butterfly is threatened by collection and habitat destruction, and designation can reasonably be expected to increase the degree of these threats to the subspecies and its habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery

progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a road range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. Achieving recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Through this listing, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. Additionally, under section 6 of the Act, we would be able to grant funds to the State of Florida for management actions promoting the conservation of the Miami blue. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Please let us know if you are interested in participating in recovery efforts for the Miami blue. Additionally, we invite you to submit any new information on the subspecies, its habitat, or threats whenever it becomes available and any information you may have for recovery planning purposes.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference or consultation as described in the preceding paragraph include the issuance of Federal funding, permits, or authorizations for construction, clearing, development, road maintenance, pesticide registration, pesticide use (on Federal land or with Federal funding), agricultural assistance programs, Federal loan and insurance programs, Federal habitat restoration programs, and scientific and special uses. Activities will trigger consultation under section 7 of the Act if they may affect the Miami blue butterfly.

Jeopardy Standard

Prior to and following listing, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area populations(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Section 9 Take

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions are applicable to the Miami blue butterfly immediately with listing. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered species at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act and associated regulations at 50 CFR 17.21. The intent of this policy is to increase public awareness of the effect of this final listing on proposed and ongoing activities within a species' range. We estimate, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements, if applicable:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected or legally acquired prior to the effective date of the emergency rule (August 10, 2011).

(2) Actions that may affect the Miami blue that are authorized, funded, or carried out by Federal agencies when such activities are conducted in accordance with an incidental take statement issued by us under section 7 of the Act.

(3) Actions that may affect the Miami blue that are not authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take permit issued by

us under section 10(a)(1)(B) of the Act. Applicants design a Habitat Conservation Plan (HCP) and apply for an incidental take permit. These HCPs are developed for species listed under section 4 of the Act and are designed to minimize and mitigate impacts to the species to the maximum extent practicable.

(4) Actions that may affect the Miami blue that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit for scientific research or to enhance the propagation or survival of the subspecies.

(5) Captive propagation activities involving the Miami blue that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit, our ''Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act,'' and in cooperation with the State of Florida.

(6) Low-impact, infrequent, dispersed human activities on foot (*e.g.,* bird watching, butterfly watching, sightseeing, backpacking, photography, camping, hiking) in areas occupied by the Miami blue or where its host and nectar plants are present.

(7) Activities on private lands that do not result in take of the Miami blue butterfly, such as normal landscape activities around a personal residence, construction that avoids butterfly habitat, and pesticide/herbicide application consistent with label restrictions, if applied in areas where the subspecies is absent.

We estimate that the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming or attempting any of these actions, of Miami blue butterflies at any life stage without a permit (research activities where Miami blue butterflies are handled, captured (*e.g.,* netted, trapped), marked, or collected will require a permit under section 10(a)(1)(A) of the Act).

(2) Incidental take of Miami blue butterfly without a permit pursuant to section 10 (a)(1)(B) of the Act.

(3) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(4) Unauthorized destruction or alteration of Miami blue butterfly habitat (including unauthorized grading, leveling, plowing, mowing, burning, trampling, herbicide spraying, or other destruction or modification of occupied or potentially occupied habitat or pesticide application in known occupied habitat) in ways that kills or injures eggs, larvae, or adult Miami blue butterflies by significantly impairing the subspecies' essential breeding, foraging, sheltering, or other essential life functions.

(5) Use of pesticides/herbicides that are in violation of label restrictions resulting in take of Miami blue butterfly or beneficial ants associated with the subspecies in areas occupied by the butterfly.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon or beneficial ants associated with the Miami blue.

(7) Removal or destruction of native food plants being utilized by Miami blue butterfly, including *Caesalpinia* spp., *Cardiospermum* spp., and *Pithecellobium* spp., within areas used by this taxon that results in harm to this butterfly.

(8) Release of exotic species into occupied Miami blue butterfly habitat that may displace the Miami blue or its native host plants.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive, and we provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 of the Act to the Field Supervisor of the Service's South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7313; Fax 404–679–7081).

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species, subspecies, or population segment as endangered or threatened if: ''(a) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.'' Listing a species as endangered or threatened under the similarity of appearance provisions of the Act extends the take prohibitions of section 9 of the Act to cover the species. A designation of endangered or threatened due to similarity of appearance under section 4(e) of the Act, however, does not extend other protections of the Act, such as consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f), that apply to species that are listed as endangered or threatened under section 4(a). All applicable prohibitions and exceptions for species listed under section 4(e) of the Act due to similarity of appearance to a threatened or endangered species will be set forth in a special rule under section 4(d) of the Act.

There are only slight morphological differences between the Miami blue and the cassius blue, ceraunus blue, and nickerbean blue, making it difficult to differentiate between the species, especially due to their small size (see Background above). Aside from technical experts, most people would have difficulty distinguishing these similar butterflies (as adults, eggs, or larvae), especially without field guides or when adults are in flight. This poses a problem for Federal and State law enforcement agents trying to stem illegal collection and trade in the Miami blue. It is quite possible that collectors authorized to collect similar species may inadvertently (or purposefully) collect the Miami blue butterfly thinking it was the cassius blue, ceraunus blue, or nickerbean blue, which also occur in the same geographical area and habitat type. The listing of these similar blue butterflies as threatened due to similarity of appearance reduces the likelihood that amateur butterfly enthusiasts and private and commercial collectors will purposefully or accidentally misrepresent the Miami blue as one of these other species.

The listing will also facilitate Federal and State law enforcement agents' efforts to curtail illegal possession, collection, and trade in the Miami blue. At this time, the three similar butterflies are not protected by the State of Florida. Extending the prohibitions of collection to the three similar butterflies through this listing of these species due to similarity of appearance under section 4(e) of the Act and providing applicable prohibitions and exceptions under section 4(d) of the Act will provide

greater protection to the Miami blue. For these reasons, we are listing the cassius blue butterfly *(Leptotes cassius theonus),* ceraunus blue butterfly *(Hemiargus ceraunus antibubastus),* and nickerbean blue butterfly *(Cyclargus ammon)* as threatened due to similarity of appearance to the Miami blue, in portions of their ranges, pursuant to section 4(e) of the Act. Therefore, the cassius blue, ceraunus blue, and nickerbean blue butterflies are listed as threatened species under the Act due to similarity of appearance only within the historical range of the Miami blue butterfly in Florida. This includes the coastal counties south of Interstate 4 (I–4) and extending to the boundaries of the State at the endpoints of I–4 at Tampa and Daytona Beach.

We are limiting the listing of these similar butterflies to only a portion of their ranges because we find this is sufficient to protect the Miami blue (from collection) while being responsive to comments received (see *Comments Relating to Similarity of Appearance Butterflies,* especially Comment #17 and Response above).

Special Rule Under Section 4(d) of the Act

Whenever a species is listed as a threatened species under the Act, the Secretary may specify regulations that he deems necessary and advisable to provide for the conservation of that species under the authorization of section 4(d) of the Act. These rules, commonly referred to as ''special rules,'' are found in part 17 of title 50 of the Code of Federal Regulations (CFR) in §§ 17.40–17.48. This special rule for § 17.47 prohibits take of any cassius blue butterfly *(Leptotes cassius theonus),* ceraunus blue butterfly *(Hemiargus ceraunus antibubastus),* or nickerbean blue butterfly *(Cyclargus ammon)* or their immature stages only throughout coastal south and central Florida in order to protect the Miami blue butterfly from collection, possession, and trade. In this context, any activity where cassius blue, ceraunus blue, or nickerbean blue butterflies or their immature stages are attempted to be, or are intended to be, collected, in counties that overlap with the Miami blue's historical range in Florida, are prohibited. Collection of the similar butterflies is prohibited south of I–4 and extending to the boundaries of the State of Florida at the endpoints of I–4 at Tampa and Daytona Beach. Specifically, such activities are prohibited in the following counties: Brevard, Broward, Charlotte, Collier, De Soto, Hillsborough, Indian River, Lee, Manatee, Pinellas, Sarasota, St. Lucie, Martin, Miami-Dade, Monroe, Palm Beach, and Volusia.

Capture of cassius blue, ceraunus blue, or nickerbean blue butterflies, or their immature stages, is not prohibited if it is accidental or incidental to otherwise legal collection activities, such as research, provided the animal is released immediately upon discovery at the point of capture. Scientific activities involving collection or propagation of these similarity of appearance butterflies are not prohibited, provided there is prior written authorization from the Service. All otherwise legal activities involving cassius blue, ceraunus blue, or nickerbean blue butterflies that are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations are not considered to be take under this regulation. For further explanation see ''Effects of the Rule'' immediately below.

Effects of the Rule

Listing the cassius blue, ceraunus blue, and nickerbean blue butterflies as threatened under the ''similarity of appearance'' provisions of the Act, and the promulgation of a special rule under section 4(d) of the Act, extend take prohibitions to these species and their immature stages in portions of their ranges. Capture of these species, including their immature stages, is not prohibited if it is accidental or incidental to otherwise legal collection activities, such as research, provided the animal is released immediately upon discovery, at the point of capture. However, this final rule establishes prohibitions on the collection of these species throughout coastal south and central Florida within the historical range of the Miami blue butterfly.

All otherwise legal activities that may involve incidental take (take that results from, but is not the purpose of, carrying out an otherwise lawful activity) of these similar butterflies, and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations, will not be considered take under this regulation. For example, this special 4(d) rule exempts legal application of pesticides, yard care, vehicle use, vegetation management, exotic plant removal, burning, and any other legally undertaken actions that result in the accidental take of cassius blue, ceraunus blue, or nickerbean blue butterflies. These actions will not be considered as violations of section 9 of the Act. We find that listing the cassius blue, ceraunus blue, and nickerbean blue butterflies under the similarity of appearance provision of the Act, coupled with this special 4(d) rule, will help minimize enforcement problems and enhance conservation of the Miami blue.

The provision to allow incidental take of these three similar butterflies will not pose a threat to the Miami blue because: (1) Activities such as yard care and vegetation control in developed or commercial areas that are likely to result in take of the cassius blue, ceraunus blue, and nickerbean blue are not likely to affect the Miami blue (which occur only on conservation lands), and (2) the primary threat that activities concerning the cassius blue, ceraunus blue, and nickerbean blue butterflies pose to the Miami blue comes from collection.

Administrative Procedure Act

As explained previously in Previous Federal Actions above, we believe that it is necessary to establish immediate protections under the Act for these butterfly species. The August 10, 2011, emergency rule (76 FR 49542) that implemented protections for 240 days expires April 6, 2012. Therefore, under the exemption provided in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), we have determined that ''good cause'' exists to make these regulations effective as stated above (see **DATES**).

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us page numbers and the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This final rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or

reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are staff members of the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entries for the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat
Common name	Scientific name					
*	*	*	*	*	*	*
INSECTS						
*	*	*	*	*	*	*
Butterfly, cassius blue	*Leptotes cassius theonus*.	U.S.A. (FL), Bahamas, Greater Antilles, Cayman Islands.	NA	T (S/A) (coastal south and central FL).	801	NA
Butterfly, ceraunus blue.	*Hemiargus ceraunus antibubastus*.	U.S.A. (FL), Bahamas	NA	T (S/A) (coastal south and central FL).	801	NA
*	*	*	*	*	*	*
Butterfly, Miami blue ..	*Cyclargus thomasi bethunebakeri*.	U.S.A. (FL), Bahamas	NA	E	801	NA
*	*	*	*	*	*	*
Butterfly, nickerbean blue.	*Cyclargus ammon*	U.S.A. (FL), Bahamas, Cuba.	NA	T (S/A) (coastal south and central FL).	801	NA
*	*	*	*	*	*	*

■ 3. In subpart D, add § 17.47 to read as follows:

§ 17.47 Special rules—insects.

(a) Cassius blue butterfly (*Leptotes cassius theonus*), Ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and Nickerbean blue butterfly (*Cyclargus ammon*).

(1) The provisions of § 17.31(c) apply to these species (cassius blue butterfly, ceraunus blue butterfly, nickerbean blue butterfly), regardless of whether in the wild or in captivity, and also apply to the progeny of any such butterfly.

(2) Any violation of State law will also be a violation of the Act.

(3) Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, will not apply to the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly.

(4) Collection of the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly is prohibited in coastal counties south of Interstate 4 and extending to the boundaries of the State of Florida at the endpoints of Interstate 4 at Tampa and Daytona Beach. Specifically, such activities are prohibited in the following counties: Brevard, Broward, Charlotte, Collier, De Soto, Hillsborough, Indian River, Lee, Manatee, Pinellas, Sarasota, St. Lucie, Martin, Miami-Dade, Monroe, Palm Beach, and Volusia.

(b) [*Reserved*].

Dated: March 27, 2012.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–8088 Filed 4–5–12; 8:45 am]

BILLING CODE 4310–55–P

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